3794.

SUPREME COURT OF THE UNITED STATES.

No. 115.

SAMUEL H. EARLY, PLAINTIFF IN ERROR,

vs.

JOHN ROGERS, JR., AND JOSEPH ROGERS, SURVIVORS, &c., OF ROGERS & BROTHERS.

IN ERROR TO THE DISTRICT COURT OF THE U. S., FOR THE WESTERN DISTRICT OF VIRGINIA.

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UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the judge of the United States court, for the western district of Virginia, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court for the trial of impeachments and the correction of errors in the said district court before you, between John Rogers, jr., and Joseph Rogers, survivors, &c., of Rogers & Brothers, plaintiffs, and Samuel H. Early, defendant; a manifest error hath happened to the great damage of the said Samuel H. Early, as by his complaint appears; and it being fit, that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington at the next regular term of said Supreme Court, to be then and there held; that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States, this 26th day of June, in the [SEAL.] year 1853, and of the independence of the United States the 77th.

ERASMUS STRIBLING,
Clerk of the United States court, western district of Virginia.

UNITED STATES OF AMERICA,
Western judicial district of Virginia, ss.

In obedience to the annexed writ of error from the Supreme Court of the United States, I, John W. Brockenbrough, judge of the district court of the United States, for the western district of Virginia, do hereby certify, that the annexed transcript from the record purporting to set forth the proceedings in a suit lately depending in the district court of the United States, for the said district, holden at Charleston, wherein John Rogers, jr., and Joseph Rogers, surviving partners of themselves, and Alfred Rogers, late merchants and partners, trading under the style and firm of Rogers & Brothers, were plaintiffs, and Samuel H. Early was defendant, is a full, true, and perfect copy from said record.

In testimony whereof I have hereunto set my hand and affixed my seal, this 5th day of July, in the year of our Lord 1853.

JOHN W. BROCKENBROUGH. [L. S.]

WESTERN DISTRICT OF VIRGINIA, *ss.*

I, Erasmus Stribling, clerk of United States court, western district of Virginia, hereby certify, that the Hon. John W. Brockenbrough, who hath given the preceding certificate, is judge as he hath therein stated, and that the signature purporting to be his *in* genuine.

In testimony whereof I have hereunto set my hand and seal
[SEAL.] of said court, this 5th day of July, A. D. 1853, and in the 78th year of the independence of the United States.

ERASMUS STRIBLING,
Clerk U. S. ct., W. D. Va.

Service acknowledged by the counsel for defendants in error.

Bond and security approved by the judge of the district court of the United States, for the western district of Virginia, duly given on the appeal in the cause mentioned within.

Teste: ERASMUS STRIBLING,
Clerk U. S. ct., W. D. Va.

Citation.

UNITED STATES OF AMERICA, *ss.*

To John Rogers, jr., and Joseph Rogers, survivors of Rogers & Brothers, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington at its next regular term, pursuant to a writ of error filed in the clerk's office of the court for the trial of impeachments and the correction of errors of the United States court, for the western district of Virginia, holden at Charleston, having circuit court jurisdiction, wherein Samuel H. Early is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness John W. Brockenbrough, judge of the district court
[SEAL.] of the United States, for the western district of Virginia, this 6th day of July, in the year of our Lord 1853.

JOHN W. BROCKENBROUGH.

Attest: ERASMUS STRIBLING,
Clerk U. S. ct., W. D. Va.

KANAWHA COUNTY, *to wit:*

Isaac N. Smith this day personally appeared before me, the undersigned, justice of the peace in and for said county, in the Commonwealth of Virginia, and made oath that he delivered a true copy of the within writ to each of the defendants therein named, to wit, John

Rogers and Joseph H. Rogers, on the 8th day of September, 1853, in the city of Cincinnati.

Given under my hand this 24th day of September, 1853.

J. C. MATHENY, *J. P.*

VIRGINIA, *sc.*

I, Alexander W. Quarrier, clerk of the county court for Kanawha county, and in the Commonwealth aforesaid, do hereby certify, that John C. Mattheny, gentleman, before whom the foregoing affidavit was made, is now, and was at the time of taking the same, an acting justice of the peace in and for said county and Commonwealth, duly commissioned and qualified, and that his signature is genuine.

In testimony whereof I have hereunto set my hand and the [SEAL.] seal of said court, this 24th day of September, 1853, and in the 78th year of our foundation.

Teste: A. W. QUARRIER, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

JOHN & JOS. ROGERS, surv's,
vs.
SAMUEL H. EARLY. } Record.

Pleas before the judge of the district court of the United States for the western district of Virginia, at Charleston, the 16th day of April, 1853, and in the 77th year of the independence of the said United States.

Be it remembered, that at rules held in the clerk's office of said court in the month of July, 1849, came John Rogers, jr., and Joseph Rogers, of Cincinnati, and citizens of the State of Ohio, survivors, &c., and filed their declaration and account against Samuel H. Early of Kanawha county, and a citizen of the State of Virginia; which declaration is in the words and figures following, to wit:

Declaration.

In the district court of the United States for the western district of Virginia, holden at Charleston, Kanawha.

VIRGINIA, *Kanawha county, to wit:*

John Rogers, jr., and Joseph Rogers, of Cincinnati, and citizens of the State of Ohio, survivors of themselves and Alfred Rogers, deceased, late of St. Louis, and a citizen of Missouri, late partners in trade, using the name, firm and style of Rogers & Bros., complain of Samuel H. Early, of Kanawha county, and a citizen of Virginia, of a plea of trespass on the case on promises, for that the said defendant, in the lifetime of the said Alfred Rogers, since deceased, heretofore, to wit, on the first day of May, 1849, at the county aforesaid, was indebted to the said Alfred Rogers, since deceased, and the said plaintiffs, in the sum of $20,000, for the work and labor, care and diligence, of the said Alfred Rogers, since deceased, and the said plaintiffs, by the said Al-

fred Rogers, since deceased, and the said plaintiffs before that time done, performed and bestowed, in and about the business of the said defendant, and at his, the defendants, special instance and request; and also in the further sum of $20,000 for divers goods, wares and merchandise, by the said Alfred Rogers, since deceased, and the said plaintiffs before that time sold and delivered to the said defendant, and at his the said defendant's special instance and request; and also in the further sum of $20,000 for money by the said Alfred Rogers, since deceased, and the said plaintiffs before that time lent, advanced to, paid, and laid out for and expended for the said defendant, and at his, the said defendant's, special instance and request; and also in the further sum of $20,000 for other money before that time had and received to and for the use of said Alfred Rogers, since deceased, and the said plaintiffs; and being so indebted, the said defendant in consideration thereof, afterwards, to wit, on the day of the year aforesaid, at the county aforesaid, undertook, and then and there faithfully promised to the said Alfred Rogers, since deceased, and the plaintiffs, to pay them the said several sums of money in this court mentioned, when he, the said defendant, should be thereunto afterwards requested.

And for that also, the said defendant, in the lifetime of the said Alfred Rogers, since deceased, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, accounted with the said Alfred Rogers, since deceased, and the said plaintiffs, of and concerning divers other large sums of money from the said defendant to the said Alfred Rogers, since deceased, and the said plaintiffs, before that time due and owing, and then arrear and unpaid, and upon such accounting the said defendant was then and there found to be in arrear and indebted to the said Alfred Rogers, since deceased, and the said plaintiffs in the further sum of $20,000, and being so found in arrear and indebted to the said Alfred Rogers, since deceased, and the said plaintiffs, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, undertook, and then and there faithfully promised the said Alfred Rogers, since deceased, and the said plaintiffs, to pay them the last mentioned sum of money when he should be thereunto afterwards requested; nevertheless, the said defendant, disregarding his said several promises and undertakings, but contriving and intending to deceive and defraud the said Alfred Rogers in his lifetime, since deceased, and the plaintiffs; and the said plaintiffs, since the death of the said Alfred Rogers, in this behalf, hath not paid as yet the several sums of money, or any, or either of them, or any part thereof, to the said Alfred Rogers in his lifetime, and the said plaintiffs, or to the said plaintiffs since the death of the said Alfred Rogers, or any or either of them, although often requested so to do; but to do this he hath hitherto wholly refused, and still doth refuse, to pay the same to the plaintiffs, to the damage of said plaintiffs of $20,000; and therefore they sue, &c.

SIMMES & MILLER, *P. Q.*

Common order.

Whereupon the said defendant being arrested, and not appearing, on motion of the plaintiffs, by their attorney, it was ordered that judgment be entered for the plaintiffs against the defendant, for what damages the plaintiffs had sustained by occasion of the non-performance of the promises and assumptions in the declaration mentioned, unless the said defendant should appear and plead to issue at the then next rules.

Common order confirmed, and writ of inquiry.

At which day, to wit, at rules held as aforesaid, in the month of August, 1849, the defendant still failing to appear, on the motion of the plaintiff by his attorney, it was ordered that the last order against him made in this cause be confirmed, and that the said plaintiffs' damages be ascertained by a jury at the then next term; whereupon the defendant, after the said order was made, appeared and tendered a special plea in writing, in abatement, to the filing of which plea the plaintiff objected, which said plea is in the following words and figures, to wit:

Plea.

"And the said Samuel H. Early, by his attorney, comes and defends the wrong and injury, when, &c., and prays judgment of the plaintiffs' writ and declaration, because he says that on the 29th day of June, 1849, the plaintiffs sued out of the clerk's office of the district court of the United States, for the western district of Virginia, a writ of capias ad respondendum against him, and returnable at rules to be held in the said office on the first Monday of July, 1849, the same writ aforementioned; and that afterwards, to wit, on the 30th day of July, 1849, a certain James M. Laidley sued out of the clerk's office of the circuit superior court of law and chancery of Kanawha county a subpœna of foreign attachment against the said plaintiffs in this suit, as absent defendants, and John N. Clarkson, Charles Hedrick, William D. Shrewsbery and the said Samuel H. Early, as home defendants, returnable at rules, to be holden in said office on the first Monday in August, 1849, upon which said subpœna there is an endorsement by the clerk of said court, to the following effect: The object of this suit is to subject the lands, tenements, hereditaments, goods and chattels, rights and credits of the said John Rogers, jr., and also those of the said John Rogers, jr., and Joseph Rogers, survivors, &c., lying in the county of Kanawha, to the payment of a certain debt of $1000 due by two bills of exchange, drawn by the complainant on Rogers & Bros., and accepted by them for $500 each, and protested for non-payment, with the interest and cost of protest due thereon; and further, to inhibit and restrain the home defendants and each of them from paying away, or otherwise disposing of any money or effects in their hands, or in the hands of either of them, due or belonging to the said absent defendants, or to either of them, until the further order of this court. Which said subpœna of foreign attachment was duly executed on the said Samuel

H. Early, by Robert H. Early, deputy for John P. Turner, sheriff of Kanawha county, on the fourth day of August, 1849, by delivering him an office copy thereof. And that also a certain Franklin Noyes, and Henry Chappell, late partners, using the style and firm of Noyes & Chappell, afterwards, to wit, on the 30th day of July, 1849, sued out of the said office a certain other subpœna of foreign attachment against the aforesaid John Rogers, jr., and Joseph Rogers, survivors of themselves and Alfred Rogers, deceased, late partners, using the name and style of Rogers & Bros., as absent defendants, and John N. Clarkson, William D. Shrewsbery, and Charles Hedrick, and the said Samuel H. Early, as home defendants, returnable likewise at the said office at rules to be held therein on the first Monday of August, 1849, upon which said subpœna there is an endorsement by the clerk of said court, to the following effect: The object of this suit is to attach the lands, tenements, goods and chattels, rights and credits of the absent defendants, and each of them, in the county of Kanawha, and subject the same to the payment of a debt, due the complainants, of $900, with legal interest thereon from the 19th day of April, 1849, until paid, and $1 cost of protested bill of exchange; and also to restrain and inhibit the home defendants, and each of them, from paying or delivering to the said absent defendants, or either of them, or to their order, or for their use, any moneys or effects, goods or chattels, which may belong, or may be due and owing, or which may hereafter become due and owing from them, or either of them, to the said absent defendants, or either of them, until further order of the court. Which said subpœna of foreign attachment was duly executed on the said Samuel H. Early, by Robert H. Early, deputy for John P. Turner, sheriff of Kanawha county, on the 4th day of August, 1849, by delivering him an office copy thereof.

And also afterwards, to wit, on the 18th day of July, 1849, a certain William Shrewsby sued out of the same office aforesaid a certain other subpœna of foreign attachment against the said John Rogers, jr., survivor of himself and Joel Shrewsby, jr., deceased, late partners, using the name and style of Rogers and Shrewsby, absent defendants, and John N. Clarkson, William D. Shrewsbery, Charles Hedrick, Samuel M. Shrewsbery, and the said Samuel H. Early, home defendants; and returnable also to rules to be holden in said office on the first Monday of August, 1849, upon which said subpœna there is an endorsement by the clerk of said court, to the following effect: The object of this suit is to attach the lands and tenements, goods and chattels, rights and credits of the absent defendants, either in his own right, or as surviving partner as aforesaid, in the county of Kanawha, and subject the same to the payment of certain debts, amounting to $418, due the plaintiff by the late firm of Rogers & Shrewsbery; and also for the same purpose to restrain and inhibit the home defendants, and each of them, from paying, conveying away, secreting, or delivering up to the said absent defendants, or to his order, or for his benefit, any money, effects, goods, or chattels, which may belong to, or be due

and owing from them, or either of them, to said absent defendant in his own right, or as surviving partner as aforesaid; or which may belong to, or be owing and due by them, or either of them, to the said John Rogers, jr., and Joseph Rogers, survivors of themselves and Alfred Rogers, deceased, late partners, using the style and firm of Rogers & Bros., until the further order of the court; and which said subpœna was duly executed on the said Samuel H. Early by the deputy aforesaid, and in the manner aforesaid, on the said 4th day of August, 1849; all of which said suits of foreign attachment are still pending and undetermined, as from the record and proceedings thereof, still remaining in said court, will fully appear.

And the said Samuel H. Early avers, that the plaintiffs in this suit are the same persons against whom the aforesaid suits of foreign attachment have been instituted as aforesaid as absent defendants; and that the said Samuel H. Early, the defendant in this suit, is the same person against whom the aforesaid suits of foreign attachment have been instituted as one of the home defendants; and that the cause of action of the said plaintiffs, against the said defendant, Samuel H. Early, is the same for which the aforesaid suits of foreign attachment are now pending against him and others as aforesaid, and this he is ready to verify. Wherefore he prays judgment whether he ought to be compelled further to answer the said plaintiffs' writ and declaration, &c.

LAMUEL H. EARLY.

By his attorneys:

SMITH, PARKS & LAIDLY.

Samuel H. Early, the defendant in the annexed cause within mentioned, maketh oath and saith, that the plea within written is true in substance and in fact.

Sworn to this 9th day of August, 1849, before me, a justice of the peace for the county of Kanawha, in the State of Virginia.

JS. C. McFARLAND, *J. P.*

And at a district court of the United States, for the western district of Virginia, held at Charleston, in Kanawha county, on the 11th day of April, 1850, came the parties by their attorneys, and thereupon the said defendant, with the leave of the court, withdrew his plea tendered at rules, and by like leave demurs to the plaintiffs' declaration, and to each count thereof; in which demurrer the plaintiffs joined. And thereupon the said defendant, for plea in this behalf, saith: That he did not assume upon himself in manner and form as the plaintiffs in their declaration have alleged, and of this he puts himself upon the country; and the plaintiffs likewise. Whereupon the office judgment and writ of inquiry were set aside, and the said demurrers being considered are overruled; and on motion of defendant, and for reasons appearing to the court, this cause is continued until next term, but at his cost.

And at another day, to wit, at a court held as aforesaid, the 18th

day of September, 1850, the defendant by his attorney pleaded payment; to which plea the plaintiffs replied generally, and put themselves upon the country; and the defendant likewise. And the said defendant tendered at the same time an account, stating the nature of the payments and set-off, which he desired to prove; to the filing of which account the plaintiffs objected.

And at another day, to wit, at a court held as aforesaid, the 21st day of September, 1850, came the parties by their attorneys, and thereupon the defendants, by the leave of the court, also pleaded set-off, and filed at the same time an account, stating the nature of the payments and sets-off, which he desired to prove. To which plea the plaintiffs replied generally, and put themselves on the country, and the defendants likewise; and then came a jury, to wit: Joseph B. Shelton, William Alexander, John Miller, John L. Hague, James G. West, Thomas L. Boggess, John Bowyer, William M. Patten, William J. Rand, Ebenezer Baynes, John A. Truslow, and Samuel W. Smith, who being elected, tried, and sworn the truth to speak upon the issues joined, and not having time to hear the evidence in full, were adjourned over until the next Monday morning, 9 o'clock.

And at another day, to wit, at a court held as aforesaid, the 26th day of September, 1850, until which time this cause was regularly continued and heard from day to day.

Judgment.

Came again the parties by their attorneys, and thereupon came also the jury empaneled and sworn in this cause, in pursuance of their adjournment, and having retired to their chamber, after some hours returned into court, and upon their oaths do say, that they find the issues for the plaintiffs, and assess their damages to twelve thousand one hundred and fifteen dollars. Whereupon *whereupon* the defendant moved the court to set aside the said verdict, and award him a new trial in the premises; which motion, being argued and considered, is overruled. Therefore it is considered by the court, that the plaintiffs recover against the defendant the damages aforesaid, in the form aforesaid ascertained, and their costs about their suit by them in this behalf expended; and the said defendant in mercy, &c.

Mem.—On the overruling the defendant's motion to set aside the verdict in this cause, and award him a new trial in the premises, the said defendant tendered a bill of exceptions in the words and figures following, to wit: (Here insert the bill of exceptions;) which is signed, sealed, and reserved to him. And the defendant thinking himself aggrieved by the verdict aforesaid, and the overruling of his motion for said verdict to be set aside, and a new trial awarded him in the premises, prays a suspension of this judgment, that he may have time to apply to the Supreme Court of the United States for a writ of supersedeas. Whereupon it is ordered that execution of this judgment be suspended for the space of ninety days from this day, when the said defendant shall give bond, before the clerk of this court, in the penalty

of fifteen thousand dollars, with condition reciting this judgment and the intention of said defendant to present his petition for such writ of supersedeas; and providing for the payment of all such damages as any person may sustain by reason of the suspension aforesaid, in case a supersedeas to the judgment aforesaid shall not be allowed and be effectual within the period of the ninety days specified above.

And the said defendant, Samuel H. Early, having obtained from the Supreme Court of the United States a writ of error to the foregoing judgment, the same is in the words and figures following, to wit:

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judge of the district court of the United States, for the western district of Virginia, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said district court, before you, between John Rogers and Joseph Rogers, plaintiffs, and Samuel H. Early, defendant, a manifest error hath happened, to the great damage of the said Samuel H. Early, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the records and proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty.

WILLIAM THOMAS CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by John W. Brockenbrough, U. S. district judge for western district, Virginia.

A copy of the original writ of error.

Teste: ERAS. STRIBLING,
Clerk.

Filed in the clerk's office of the district court of the U. S., for the western district of Virginia, by Maj. Jubal A. Early, 21st December, 1850.

Teste: ERAS. STRIBLING, *Clerk.*

And on the 11th day of October, 1852, in the clerk's office of the district court of the United States, for the western district of Virginia, in said cause, a mandate from the Supreme Court of the United States was received and filed, which mandate is in the words and figures following, to wit:

Mandate of the Supreme Court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable the judge of the district court of the United States, for the western district of Virginia, greeting:

[SEAL.]

Whereas lately in the district court of the United States, for the western district of Virginia, before you, in a cause between John Rogers and Joseph Rogers, plaintiffs, and Samuel H. Early, defendant, the judgment of the said district court was in the words following, viz: "Therefore, it is considered by the court, that the plaintiffs recover against the defendant their damages aforesaid, in the form aforesaid ascertained, and their costs by them about their suit in this behalf expended, and the said defendant in mercy, &c.;" as by inspection of the transcript of the record of the said district court, which is brought into the Supreme Court of the United States, by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears:

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and fifty-one, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and on the following stipulations filed by the parties, to wit:

Western district, United States Court, in Virginia.

JOHN ROGERS and JOSEPH ROGERS
vs.
SAMUEL H. EARLY.

SAMUEL H. EARLY.
vs.
JOHN ROGERS and JOSEPH ROGERS.

Judgment for about $12,500 00. Same case now pending on error in the Supreme Court, United States.

In order to put an end to the litigation between the above parties, and as a compromise the matters in difference between them, that said Samuel H. Early shall pay to the said John Rogers and Joseph Rogers, between this and the first day of September next, the sum of ten thousand dollars, which sum of ten thousand dollars the said John Rogers and Joseph Rogers agree to receive of the said Samuel H. Early in full satisfaction and discharge of the original judgment entered against the said Early for the sum of about $12,500 00, in said district

court of the United States, for the western district of Virginia, and in full satisfaction and discharge of all claims and demands which said John Rogers and Joseph Rogers held against said Early in any account arising out of the dealings on which said litigation is founded.

And it is further agreed, that the original judgment rendered in said district court of the United States for the western district of Virginia, and which is taken up to the Supreme Court of the United States on a writ of error, which is now pending in that court, may be entered affirmed in said Supreme Court at its present session, subject to the above agreement: that is, the judgment, although affirmed, shall not be obligatory for more than the above sum of ten thousand dollars, to be paid as aforesaid; and as soon as that sum is paid, the said judgment shall be entered satisfied, provided the amount is paid on or before the said first day of September next. Costs to be paid by Early.

May 18th, 1852.

SAMUEL H. EARLY,
By CHARLES FOX, *his attorney.*
JOHN ROGERS,
JOSEPH ROGERS,
By JAMES F. MELINE, *their attorney.*

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said district court in this cause be and the same is hereby affirmed, with costs, in conformity to the preceding stipulations; and that the said plaintiffs recover against the said defendant, Samuel H. Early, one hundred and twenty-nine dollars and fifty-two cents for their costs herein expended, and have execution therefor.

May 27, ——.

You therefore are hereby commanded, that such execution and proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-one.

Costs of plaintiffs.

Clerk - - -	$109 52
Attorney - - -	20 00
	$129 52

Taxed by William Thomas Carroll, clerk of the Supreme Court of the United States.

And at another day, to wit, on the 11th day of January, 1853, came the plaintiffs by their attorney, and sued out of the clerk's office of the said district court a writ of fieri facias against the defendant, which writ, together with the endorsement thereon, is in the words and figures following, to wit:

Execution.

The President of the United States of America, to the marshal of the western district of Virginia, greeting:

We command you, that of the goods and chattels of Samuel H. Early, late in your district, you cause to be made the sum of $12,115 00, and $246 56, which John Rogers and Joseph Rogers, survivors of Alfred Rogers, deceased, lately in our district court for the western district of Virginia, held at Charleston, recovered against him, as well for damages which they sustained by reason of the non-performance of certain promises and assumptions by the said Early, to them lately made, as for their costs by them about their suit in this behalf expended; also the sum of $741 69 cts., being damages, after the rate of 6 per centum per annum on the said damages and costs from the 7th day of December, 1850, the date of the writ of error issued by the Supreme Court of the United States to said judgment, to the 7th day of December, 1851, the date of the mandate affirming the same; and $129 52 cts., their costs in the said Supreme Court; also the sum of $3 37 cts., which to the said John and Joseph Rogers were adjudged for the costs of sueing out this writ of execution, whereof the said Early is convicted, as appears to us of record. And that you have the same before the judge of our said district court, at rules to be held in the clerk's office thereof, on the first Monday in March next, to render to the said John and Joseph Rogers of the debt, damages and costs aforesaid; and have then there this writ.

Witness the Hon. John W. Brockenbrough, judge of the said court, this 11th day of January, 1853, and in the 77th of our foundation.

ERASMUS STRIBLING, *Clerk.*

Endorsement.

"The following is an abstract from the mandate of the Supreme Court of the United States:

And whereas in the present term of December, in the year of our Lord one thousand eight hundred and fifty-one, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and on the following stipulation, filed by the parties, to wit:

JOHN ROGERS and JOSEPH ROGERS
vs.
SAMUEL H. EARLY.

SAMUEL H. EARLY
vs.
JOHN ROGERS and JOSEPH ROGERS.

In order to put an end to the litigation between the above parties, and as a compromise, the matters of difference between them, that the said Samuel H. Early shall pay to said John Rogers and Joseph Rogers,

between this and the first day of September next, the sum of ten thousand dollars, which sum of ten thousand dollars the said John Rogers and Joseph Rogers agree to receive of the said Samuel H. Early in full satisfaction and discharge of the original judgment entered against the said Early for the sum of about $12,500 00, in said district court of the United States, for the western district of Virginia, and in full satisfaction and discharge of all claims and demands which the said John Rogers and Joseph Rogers hold against the said Early in any account arising out of the dealings on which said litigation is founded; and it is further agreed, that the original judgment rendered in the said district court of the United States, for the western district of Virginia, and which is taken up to the Supreme Court of the United States on a writ of error, which is now pending in that court, may be entered affirmed in said Supreme Court at its present session, subject to the above agreement; that is, the judgment, although affirmed, shall not be obligatory for more than the above sum of ten thousand dollars, to be paid as aforesaid, and as soon as that sum is paid the said judgment shall be entered satisfied; provided the amount is paid on or before said 1st day of September next. Costs to be paid by Early.

SAMUEL H. EARLY,
By CHARLES FOX, *his attorney.*
JOHN ROGERS & JOSEPH ROGERS,
By JAMES F. MELINE, *their attorney.*

18th May, 1852.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said district court in this cause be, and the same is hereby, affirmed, with costs, in conformity to the pending stipulations; and that the said plaintiffs recover against the said defendant, Samuel H. Early, $129 52 cents for the costs herein expended, and have execution therefor.

Teste: ERASMUS STRIBLING, *Clerk.*"
May 27th."

And at another day, to wit, at a district court of the United States, held as aforesaid at Charleston, on the 13th day of April, 1853, came the plaintiffs, by their attorney, and filed their notice against the said defendant, in the words and figures following, to wit:

Notice.

To Samuel H. Early.

A judgment having been entered on a verdict rendered in our favor at the fall term, 1850, (on the 26th day of September, 1850,) of the district court of the United States, for the western district of Virginia, against you, for the sum of $12,115 00, and the court having failed and omitted, in entering said judgment, to render interest on the above mentioned sum from the date of said verdict, as required by law, notice is therefore hereby given you that we shall, on the first day of the

next term of the said district court, to be held at Charleston, in the county of Kanawha, move said court to amend and correct the errors and defects aforesaid of the said judgment, and to render a judgment against you for the sum specified in the verdict aforesaid, with legal interest thereon from the date of said verdict till paid; and we also give you notice that we shall, at the same time, move said court to allow execution to be issued against you for the full amount of the said judgment as amended.

Given under our hands this 7th day of April, 1853.

JOHN ROGERS, JR., & JOSEPH H. ROGERS,
Surviving partners of the late firm of Rogers & Bros.

Affidavit.

VIRGINIA, *Kanawha county, to wit:*

John Slack, jr., personally appeared before me, the undersigned, a justice of the peace *of* for said county, and made oath, that on this 8th day of April, 1853, he delivered a true copy of the within notice to the within named Samuel H. Early.

Given under my hand this 8th day of April, 1853.

GEO. H. PATRICK,
Justice peace.

Affidavit.

VIRGINIA, *Kanawha county, to wit:*

Joseph H. Rogers personally appeared before the subscriber, a justice of the peace in and for the county aforesaid, and made oath, in due form of law, that the surviving partners of the late firm of Rogers and Brothers, of which firm this affiant was a member, at the fall term of 1850, of the district court of the United States, for the western district of Virginia, held at Charleston, recovered a judgment against Samuel H. Early for the sum of $12,115 00. Affiant further states, that the said sum, so recovered as aforesaid, is wholly due, and unpaid, and that no part or parcel thereof whatever hath been paid by the said Early.

Given under my hand this 13th day of April, 1853.

GEO. H. PATRICK, *J. P.*

Whereupon notice of motion on the said notice being proved, it was ordered to be docketed and continued until the next day.

Judgment.

And now, at this day, to wit, at a court held as aforesaid, the 16th day of April, 1853, came again the parties by their attorneys, and thereupon the arguments of counsel being fully heard on the said motion, it is considered by the court that the same be overruled, and that the defendant recover against the plaintiffs his costs by him about his defence in this behalf expended.

Rule, and judgment thereupon.

And, on the motion of Samuel H. Early, a rule was awarded him returnable here forthwith against John Rogers, jr., and Joseph H. Rogers, requiring them to show cause why the execution heretofore sued out on the mandate of the Supreme Court of the United States, awarded on a judgment of the said Supreme Court in favor of said John and Joseph Rogers against said Samuel H. Early, which execution bears date the 11th day of January, 1853, and was returnable at March rules, 1853, shall not be quashed. And also to show cause why execution on the said judgment of the said Supreme Court should not be limited to the sum of ten thousand dollars, with interest thereon from the 1st day of September, 1852, and the costs; and also why the same shall not be stayed until the further order of the court, on account of certain attachments and suggestions.

Whereupon the said John Rogers, jr., and Joseph H. Rogers appeared in answer to the said rule, and the evidence and arguments of counsel being heard, it is considered by the court that the said execution be quashed, but that the said John Rogers, jr., and Joseph H. Rogers be allowed to sue out their execution against the said Early for the sum of $12,115 00, and $246 56 c. costs of the judgment in this court, and $129 52 c., the costs in the Supreme Court aforesaid, but without interest, and without damages on said sums.

Mem.—That on the trial of the said rule the said Samuel H. Early tendered a bill of exceptions to opinions of the court delivered on the said trial, in the following words and figures, to wit:

Bill of exceptions.

"Be it remembered, that on the trial of these motions, the defendant produced and showed to the court the record of the following attachments and suggestions, to wit: one in behalf of Nathaniel V. Wilson against John and Joseph Rogers, said Early, and others, in the following words and figures:

"VIRGINIA, *ss.*"

NATH'L V. WILSON
vs.
JOHN & JOS. ROGERS and als. } Record.

Pleas before the judge of the circuit court for Kanawha county, at the court-house thereof, on the 20th day of November, 1851, and in the 75th year of the Commonwealth.

Be it remembered, that heretofore, to wit, at rules held in the clerk's office of the said court, in the month of June, 1849, came Nathaniel V. Wilson, by his counsel, and filed his bill and exhibits against John Rogers and others, which bill and exhibits are in the words and figures following:

Bill.

"To the honorable judge of the circuit superior court of law and chancery for Kanawha county.

Humbly complaining, showeth your orator, Nathaniel V. Wilson, unto your honor, that on the day of December, 1848, he drew a bill of exchange on Rogers & Bros., a commercial house in Cincinnati, composed of John, Alfred, and Joseph Rogers, for the sum of $900 00, payable four months after date; that the said bill was founded on valuable considerations, being drawn on consignments of salt made to said house, and was duly accepted by them; that when said bill arrived at maturity, it was presented for payment, which being refused, it was formally protested; all of which will more fully appear by a copy of the said bill, protest, &c., herewith filed, marked (A;) that said bill and interest accrued is still due and unpaid; that the said Alfred Rogers is, since the protest thereof, *is* dead, whereby, as your orator is advised, title to the partnership property rests in the survivors, the said John and Joseph Rodgers; that said John and Joseph Rodgers are non-residents of the Commonwealth, and that process of this court cannot be served upon them; that the said John Rodgers is seised and possessed of valuable real and personal estate, situated and lying in the county of Kanawha, to wit:

First. A lot of land in the town of Charleston, situated on Front street, on the south side thereof, next below the tenement of John Trugeon, and conveyed to said Rodgers and Jo., Wm., and Chas. Shrewsbery, by George Mitchell, by deed bearing date the 6th of April, 1839.

Second. A lot of land on same street, nearly opposite the former and next below the tenement of A. H. Beach, and conveyed to same parties by John Mags and wife, by deed bearing date 6th of April, 1839.

Third. A lot of land on same street, and south side thereof, and conveyed by James Wilson to said Rodgers, Joel and William Shrewsbery, by deed bearing date 3d of March, 1831, which said lot and the storehouse thereon is occupied by William F. Goshom and others.

Fourth. A lot on same street, and same side, and adjacent, conveyed to said Rodgers, Jo., Wm., and Chas. L. Shrewsbery, by Henry C. Anderson, by deed bearing date the day of 183 .

Fifth. A lot on same street, and same side, adjoining and above lot lately owned by Gabriel Garrean, conveyed by James A. Lewis to J. Rodgers, Joel and Wm. Shrewsbery, by deed dated October, 1830, (improved.) That the said John Rodgers is seised of one undivided fourth of the aforesaid lots Nos. 1, 2, and 4, and of one undivided third part of Nos. 3 and 5; and the heirs of Joel Shrewsbery the remaining interest therein, by deeds from said Charles and William Shrewsbery, but those interests are encumbered with several deeds of trust to secure the payment of certain debts. Copies of said first mentioned deeds, marked Nos. 1, 2, 3, 4, and 5, are herewith filed, and prayed to be taken as parts of this bill.

Your orator charges that said John Rodgers has an equitable interest in certain slave property conveyed by Shrewsbery to Samuel Hannah and James Hendrick, in trust, for certain creditors therein named, and which deed provides for the substitution of said John Rodgers to all the rights of said creditors under the deeds, whose claims said Rodgers shall pay off and satisfy; and your orator charges, that said Rodgers has paid off and satisfied many of these debts, and by consequence has a lien on said slave property, conveyed to said Hannah & Hendrick; a copy of which deed, containing the names, &c., of said slaves is herewith filed, marked, and prayed to be taken as part of this bill.

Your orator further states, that said Rodgers had an interest in certain salt property situated in Kanawha salines, and known as the dead property, which has been sold under a decree of the circuit superior court of Kanawha county, and the proceeds of the sale are in the hands of, or in process of collection by, the commissioner of the court, Charles Hedrick, and that said Rodgers is a purchaser under said judicial sale of a parcel of said property, but to what amount, and whether the purchase money thereon has been paid, your orator is not advised. Your orator is further informed, and therefore charges, that certain persons, to wit, Samuel H. Early, John W. Clarkson, and William D. Shrewsbery, are indebted severally to said John, Alfred, and Joseph Rodgers in divers large sums of money for merchandise sold and delivered them, money advanced, &c., &c., but of the exact amount of said indebtedness your orator is not advised, and in tender consideration of the premises your orator prays that the said Samuel Hannah, James Hendrick, and Charles Hedrick, John W. Clarkson, Samuel H. Early, and William D. Shrewsbery be made defendants to this bill, and compelled to answer the several allegations thereof on oath; that said trust, subject, conveyed to and under the control and direction of said trustees, Hannah and Hendrick, be subjected to sale, and the equitable interest of said John Rodgers therein be subjected to the payment of your orator's said debt; that said Charles Hedrick do truly discover what amount of the proceeds collected or to be collected from the proceeds of the said deed property is payable to John Rodgers, and what purchases he may have made at sale of said properties, and what title he may therein, by the payment of the purchase money, be equitably vested with, and that said Hedrick may be inhibited and restrained from paying over any money that may be in, or may hereafter come into his hands for said Rodgers, until the further order of this court; that John W. Clarkson, Samuel H. Early, and William D. Shrewsbery, be respectively required to say upon oath what balances, if any, were due from them, and each of them, to said John Rodgers, or to Rodgers & Brothers, at the date of the service of the subpœna upon them, and each of them, in this cause, and if they, or either of them, is unable to state the exact sum due by them, and each of them, to said Rogers and Brothers, that each of them do state it as nearly as he can, and whether the said indebtedness of each may amount to the sum of $5,000 00, $4,000 00, $3,000 00, $2,000 00, or less; with

such other and further relief as may be or seem consistent with equity and good conscience; and your orator will ever pray, &c.

READ & CARR, *Attorneys.*"

Subpœna.

"The Commonwealth of Virginia, to the sheriff of Kanawha county, greeting:

We command that you summon John Rogers, Joseph Rogers and Alfred Rogers, partners in trade, using the name, firm and style of Rogers & Brothers, absent defendants, and John W. Clarkson, Samuel H. Early, William D. Shrewsbery, Napoleon B. Cabell, Charles Hedrick, Samuel Hannah and James Hendrick, home defendants, if they be found in your bailiwick, to appear before the judge of our circuit superior court of law and chancery, for the county of Kanawha, at rules to be held in the clerk's office of said court, on the first Monday of June next, to answer a bill in chancery exhibited against them in our said court by Nathaniel V. Wilson.

And unless they shall answer said bill within two months thereafter, the court will take the same for confessed, and decree accordingly; and this they shall in nowise omit, under the penalty of 333 dollars 33 cents; and have then and there this writ.

Witness Alexander W. Quarrier, clerk of our said court, at the court-house of our said county, the 28th day of May, 1849, in the 73d year of the Commonwealth.

A. W. QUARRIER."

Endorsement.

The object of this suit is to attach the lands and tenements, goods and chattels, rights and credits of the absent defendants, and each of them, in the county of Kanawha, and subject the same to the payment of the debts or claims due the complainants; and also to restrain and inhibit the home defendants, and each of them, from paying or delivering to the said absent defendants, or either of them, or to their order, or for their use, any moneys or effects, goods or chattels which may belong to, or be due and owing, or which may hereafter become due or owing from them, or either of them, to the said absent defendants or either of them, until the further order of this court.

READ & CARR.

Test: A. W. QUARRIER, *Clerk.*

Return:

"Executed the first day of June, 1849, on all of the home defendants, by delivering office copies thereof to them, and returning John Rogers, Alfred Rogers and Joseph Rogers, no inhabitants.

R. H. EARLY, *Deputy,*
For JNO. P. TURNER,
Sheriff, K. C.

3814

Draft and protest.

"CINCINNATI, *27th Dec'r*, 1848.

Four months after date, pay to the order of William Gillison, nine hundred dollars, value received, and charge the same to account of Nathaniel V. Wilson.

To Messrs. Rogers and Brothers, Cincinnati.

Endorsed: W. Gillison pay S. M. Jackson, esq., cashier, or order.

Accepted for N. V. Wilson, Rogers & Brothers.

UNITED STATES OF AMERICA,
State of Ohio, sct.

By this public instrument of protest be it known, that on Monday the 30th day of April, in the year of our Lord one thousand eight hundred and forty-nine, I, John F. Keys, notary public for the county of Hamilton, in the State of Ohio, by lawful authority duly commissioned and sworn, living in the city of Cincinnati, in the county and State aforesaid, at the request of S. M. Jackson, esq., cashier of the Franklin Branch Bank, holder of the original draft hereto attached, at the close of bank hours presented the same to Rogers & Brothers and demanded payment, they answered, we cannot pay it; whereupon I, the said notary, on the authority aforesaid, have protested and do hereby solemnly protest, as well against the drawer of said draft as against all other persons whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages and interests, suffered or to be suffered for the want of payment thereof. Thus done and protested at Cincinnati, the and year above written. In testimony whereof, I grant these presents under my signature, and the impress of my notarial seal of office.

[SEAL.] JOHN F. KEYES, *Notary public.*

Order of publication.

VIRGINIA, *sc.*

And at rules held in the clerk's office aforesaid, in the month of June, 1849, the defendants, John Rogers, Joseph Rogers and Alfred Rogers, not having entered their appearance, and given security according to the act of assembly and the rules of this court, and it appearing by satisfactory evidence that they are not inhabitants of this State, it is ordered that they appear here, at rules to be held in the clerk's office aforesaid, on the first Monday of September next, and answer the complainant's bill; and that a copy of this order be forthwith inserted in the Kanawha Republican, a newspaper published in this county, for two months successively, and posted on the front door of the court-house of said county.

And at rules held in the month of October, 1849; the order of publication awarded at June rules last having been duly executed, and the defendants still failing to appear, on motion of the complainant by his counsel, the bill was taken for confessed and set for hearing.

And at a circuit court holden for Kanawha county, the 30th day of

November, 1849, on motion of the complainant by counsel, this suit was remanded to the rules, with leave to him to amend his bill and make new defendants thereto, he paying the costs occasioned thereby.

And at rules held as aforesaid, in the month of January, 1850, came the complainant by counsel, and sued out of the clerk's office of the said court his subpœna vs. William Gillison, a new made defendant, which subpœna with the return thereon is in the words and figures following, to wit:

Subpœna.

"The Commonwealth of Virginia, to the sheriff of Kanawha county, greeting:

We command you that you summons William Gillison, if he be found in your bailiwick, to appear before the judge of our circuit superior court of law and chancery for the county of Kanawha, at rules to be held in the clerk's office of the said court, on the first Monday in February next, to answer a bill and amended bill in chancery, exhibited against him and others in our said court by Nathaniel V. Wilson; and unless he shall answer said bill within two months thereafter, the court shall take the same for confessed, and decree accordingly; and this he shall in nowise omit, under the penalty of 333 dollars and 33 cents; and have then there this writ.

Witness Alexander W. Quarrier, clerk of our said court, at the court-house of our said county, the 15th day of January, 1850, in the 74th year of the Commonwealth.

A. W. QUARRIER, *Clerk.*"

Return.—"Executed 16th January, 1850.

W. P. WOODS, *D.*

J. P. TURNER, *S. K. C.*"

And at rules held as aforesaid, in the month of February, 1850, came the complainant by counsel, and filed his amended bill against the defendants, (which bill as so amended is heretofore copied in this record.)

Bill—amended—filed, and Order of publication.

And the defendants, John Rogers and Joseph Rogers, not having entered their appearance and given security according to the act of assembly and the rules of this court, and it appearing by satisfactory evidence that they are not inhabitants of this Commonwealth, it is ordered that they do appear here on the first day of the next term, and answer the bill of the complainant; and that a copy of this order be forthwith inserted in the Kanawha Republican for two months successively, and posted at the front door of the court-house of this county.

And at rules, held as aforesaid, in the month of April, 1850, came the complainant, by his counsel, and the defendants failing to appear and answer the bill so amended, the same is taken for confessed and set for hearing.

And at a circuit superior court of law and chancery, held for said county, the 25th day of May, 1850—two months having elapsed since the filing of complainant's bill, and service of protests on the home defendants, John N. Clarkson and William D. Shrewsbery, and they still failing to answer said bill, on motion of complainant's counsel, a rule was awarded him against said home defendants, to show cause why they shall not be attached as and for a contempt, returnable here forthwith. And at a court held as aforesaid, on the third day of June, 1850, on motion of Chas. Hedrick, a home defendant in this suit, and with the leave of the court, he filed his answer to the bill of the complainant.

And at a court held as aforesaid, the fourth day of June, 1850, on motion of Wm. D. Shrewsbery, a home defendant in this suit, and with the leave of the court, his answer to the bill of the complainant was filed.

And at a court held as aforesaid, on the 18th day of June, 1850, on motion of John N. Clarkson and Samuel H. Early, home defendants to this suit, by counsel, leave was given them to appear and answer; and, thereupon, they filed their separate answers to the bill of the complainant.

Which said several answers are in the words and figures following, to wit:

Answer of defendant, Chas. Hedrick.

"The separate answer of Charles Hedrick, special commissioner, &c., to the bill of complaint of Nath'l V. Wilson, filed in the circuit superior court of law and chancery for Kanawha county, against him and others.

To the honorable Judge of said court:

Your respondent, saving and reserving, &c., for answer unto said bill, or so far as he is advised it is material for him to answer thereunto, answereth and saith, that on the first day of Feb'y, 1848, he, as special commissioner in the suit of A. Donnelly vs. Shrewsbery & others, depending in said court on the chancery side thereof, sold, pursuant to a decree made therein, certain lands in said decree mentioned, for the sum of $25,820 00; five per cent. of which was paid in hand and applied to the payment of costs of suit; expenses of surveying, sale, taxes paid by complainant in said suit, and to counsel, &c.; all of which will more fully appear by reference to the papers in that cause. The rest of the purchase money, being $24,429 00, was to be paid in equal instalments of one, two, three, and four years, with personal security, and a lien to be retained on the property as further security. In this property the firm of C. L. Shrewsbery & Co., composed of John Rogers, jr., Joel Shrewsbery, jr., Charles L. Shrewsbery, and William Shrewsbery, parties to that suit, were jointly and equally interested, to the amount of nearly one-fourth of the whole of it. Before the sale made

by your respondent, as aforesaid, William Shrewsbery had sold and conveyed his interest to said Joel, now deceased, as appears by deed, duly recorded in the clerk's office of said county, (Book No. 85;) and said John Rogers, about the time of said sale by respondent, told him he purchased and owned said C. L. Shrewsbery's interest. But said Shrewsbery has since told respondent that said Rogers had not purchased, and that he still owns the same himself. How this is in point of fact, your respondent is as yet unable to decide; he believes, however, that it is notorious that the late firm of Rogers & Shrewsbery, composed of said John Rogers and Joel Shrewsbury, now deceased, succeeded in business in the county of Kanawha, and elsewhere the former firm of C. L. Shrewsbery & Co., and that it was generally understood that they assumed the debts and liabilities, and became the owners of all the social and joint property, real and personal, of said firm of C. L. Shrewsbery & Co. At said sale, so made by your respondent, said John Rogers became the purchaser of a large part of the property; his purchase amounting, in all, to the sum of $15,950 00, whereof 5 per cent. was paid, leaving a balance of $15,152 50, for which he executed his bond, payable in four annual payments of $3,788 12½ each, with William D. Shrewsbery and Joel Shrewsbery, since deceased, as his securities, the title to the property he purchased being retained as further security; and Messrs. Dickinson and Shrewsbery became the purchasers of the rest of said property, at the sum of $9,870 00, whereof 5 per cent. of the purchase money was paid in hand as aforesaid, leaving a balance of $9,376 50, for which their bond was taken with personal security, payable in four equal annual payments, and the title retained as further security. The first instalment on each of said bonds was due the first of February last, 1849. Said John Rogers and securities have wholly failed to make any payment on their bonds; Messrs. Dickinson and Shrewsbery, however, made the first payment on theirs, except an error in allowing them part of Col. Wm. Steel's interest, which they claimed, and to which, upon a closer examination, your respondent ascertained, as he believes, they had no right; and which he has since paid to Mr. John D. Limes, as the rightful owner thereof, intending to make the said D. and S. pay the same hereafter. But this first payment by Messrs. D. and S. may be considered, as far as your respondent is here concerned, as having been fully made. It amounts to the sum of $2,344 12½, being one-fourth of the said sum of $9,376 50; two per cent. was deducted for, as per decree, *for* your respondent's commissions, leaving for distribution which your respondent was required to make to the owners, their heirs, assigns, &c., the sum of $2,297 24. Of this sum there is now in the hands of respondent, as com'r, the sum of $287 71½, belonging to the estate of said Joel Shrewsbery, jr., deceased; the sum of $143 85¾ belonging to the said John Rogers, jr.; and the sum of $143 85¾ belonging to said John Rogers, or to said C. L. Shrewsbery, your respondent does not yet know which. But your respondent alleges that at or before the time that said bond of John Rogers, jr., William D.

Shrewsbery, and Joel Shrewsbery, jr., was taken, it was the understanding and substantially the agreement between him and said John Rodgers, jr., and Joel Shrewsbery, jr., that their interest, which they claimed to be the whole of the interest of C. L. Shrewsbery & Co., should be considered as part security for the payment of their bond, and should be taken, from time to time, as instalments became due, as payment to the extent of their interest, the said Joel telling your respondent at the same time, that he was equally interested with said Rogers in said purchase; it being made, as he said, for the firm of Rogers & Shrewsbery, then composed of himself and said Rogers. Your respondent therefore claims and expects to have the interest of said Rogers & Shrewsbery in the whole of said purchase money, (including the purchase of D. and S.,) subjected to the payment of their bond aforesaid, as far as said interest will go, and unless the rest of the bond is otherwise paid, to have the land which was so purchased by said Rogers again sold for the purchase money. It is true there is personal security to said bond, but whether the court will in that suit require that the principal or surety shall pay the purchase money or be pushed to insolvency before a resale must be had, your respondent does not undertake to say. But he will here suggest that if the surety should pay said bond, he shall be substituted to the lien, and rights, and remedies of your respondent, as com'r as aforesaid, against said land, and that the same would be sold on his motion to reimburse and save him harmless, so that said complainants in this suit could get nothing but such a surplus as may be after a resale, unless said Rogers pays off his said bond, in which event your respondent supposes said land might be made subject and liable to his debts. But whether it is probable there will be any such surplus, or that said Rogers will pay off said bond, your respondent does not pretend to say. Your respondent having fully answered unto said bill, or so much of it as he is advised that it is material for him to answer unto, prays to be hence dismissed with his reasonable costs, &c.

C. HEDRICK.

HEDRICK, *Sol.*

KANAWHA COUNTY, *to wit:*

This day Charles Hedrick, respondent in the foregoing answer, came personally before me, a justice of the peace for said county, and made oath that the matters and things in said answer contained are true, so far as alleged to be of his own knowledge, and so far as alleged to be by the information of others, he believes them to be true.

Given under my hand, the thirtieth day of November, 1849.

H. H. WOOD.

Answer of defendant, William D. Shrewsbury.

The separate answer of William D. Shrewsbury to the bill of complaint of Nathaniel V. Wilson against him (said Wilson) and others,

filed in the circuit superior court of law and chancery, for Kanawha county. This respondent, saving, &c., answereth and saith, that at the time of the service of the subpœna in this case, he was indebted to Rogers and Brothers in a balance due in a long continued account in commercial transactions between them, but the true amount he is wholly unable to state. Respondent has frequently compared accounts with them, but has hitherto been unable to arrive at the balance due; respondent however believes it at all events to be equal the sum of $900, the amount of plaintiff's demand; respondent further states, that before the institution of this suit, at the instance of John Rogers, and founded on the consideration of his indebtedness aforesaid, he became surety of John Rogers in bonds amounting to the sum of $15,000, or a little more, given for the purchase money for the dead property, sold as in the bill mentioned, and purchased in part by the said John Rogers; that the interest of said John Rogers in said property is much less than the proportion he purchased; that said Rogers has made default in the payment of the purchase money at least for so much thereof as is due; that respondent having entered into this security aforesaid before the filing of this bill, in consideration of his indebtedness aforesaid, holding his liability to Rogers & Brothers, as indemnity to that extent for the securityship aforesaid, as by the understanding of the parties at the time, he will resist the payment of any amount due by him to Rogers & Brothers to the plaintiffs, until he is released from his liability as surety as aforesaid, so far as to enable him to pay without loss or hazard; respondent has no sort of disposition to evade payment to complainant, and *and* only refuses for his own safety; having indemnity to the amount of his indebtedness to Rogers & Brothers, for his liability for Rogers in his own hands, neither justice or equity can ask him to surrender it.

Respondent further states, that he was served with process in other cases of the like kind with the present, but whether this or the others has the priority, he does not know; but if it becomes material he will furnish a list of those which may have a priority, as part of this answer. This respondent having this answered, prays to be hence dismissed, &c.

B. H. SMITH, *Solicitor.*

VIRGINIA, *Kanawha county, to wit:*

William D. Shrewsbury, the respondent in the foregoing answer, made oath before the subscriber, a justice of the peace for said county, that the matters stated in said answer are true, as he verily believes.

Given under my hand this third day of June, 1850.

JS. C. McFARLAND,
Justice of the Peace.

3f17/25

Answer of defendant, John N. Clarkson.

To the honorable Mathew Dunbar, judge of the circuit superior court of law and chancery for Kanawha county.

The separate answer of John N. Clarkson to the bill of complaint exhibited against him and others in said court by Nathaniel V. Wilson.

This respondent, saving and reserving, &c., for answer to complainant's bill, or so much thereof as he is advised it is material for him to answer unto, answereth and saith: That he knows nothing about the transactions of the complainant and Rodgers & Brothers, nor in regard to the real estate mentioned in complainant's bill of complaint; he, therefore, is not prepared either to deny or admit any thing in regard to those matters.

The respondent further answereth and saith, that the late firm of Rogers & Brothers have been for a number of years past doing a large business as commission merchants and wholesale and retail grocers in the city of Cincinnati, in the State of Ohio; and that this respondent, during several years, was engaged in manufacturing salt in the Kanawha salines, and that during those years he shipped large quantities of salt to Rodgers & Brothers, to be sold for him by said firm on commission in the city of Cincinnati; that said Rogers & Brothers reshipped large quantities of respondent's salt from Cincinnati to foreign and distant markets without any authority from him, and thus consumed a large share of the profits of said salt, as they contend, in charges for reshipment, &c.

Respondent further saith, that during the years aforesaid the said Rogers & Brothers accepted for this respondent for considerable amounts on said salt; they also supplied respondent during their dealings aforesaid with amounts of groceries, merchandise, &c., and that the large mutual accounts aforesaid between respondent and Rogers have never been settled and adjusted; the parties at one time submitted their mutual accounts to arbitration; but the said Rogers & Brothers refused to submit to the award of the arbitrators.

The respondent further answereth and saith, that he has always been willing and anxious to settle the aforesaid accounts, upon fair and just principles, but that the said Rogers & Brothers have uniformly declined settling in this way. Respondent also avers, that there is now a suit at law pending in the district court of the United States, for the western district of Virginia, in favor of Rogers and Brothers against himself, in which all the aforesaid accounts are involved; respondent avers, that in the present unsettled state of accounts between himself and Rogers & Brothers, it is impossible for him to state, upon a full settlement and adjustment of their accounts, whether he would be in their debt or not; respondent believes, and so charges, however, that if their mutual accounts were properly and fairly settled, he would owe the said Rogers & Brothers nothing.

And the respondent having fully answered, prays that he be hence dismissed with his reasonable costs.

JOHN N. CLARKSON.

A. PARKS, *Solicitor.*

VIRGINIA, *Kanawha county, to wit:*

This day, John N. Clarkson personally appeared before me, the undersigned justice of the peace in and for the county aforesaid, and made oath that the matters and things contained in the annexed answer, so far as stated on his own knowledge are true, and so far as stated from the information of others, he believes them to be true.

Given under my hand this 14th day of June, 1850.

WILLIAM GILLISON,
Justice of the peace.

Answer of defendant, Samuel H. Early.

To the honorable Mathew Dunbar, judge circuit superior court of law and chancery, for Kanawha county.

The separate answer of Samuel H. Early to the bill of complaint exhibited against him and others by Nath'l V. Wilson in said court.

This respondent, saving and reserving, &c., for answer of complainant's bill, or so much of it as he is advised it is material for him to answer unto, answereth and saith: That he knows nothing of the transactions between the complainant and Rogers & Brothers, nor of the title to the real estate mentioned in complainant's bill; he therefore neither admits or denies any thing about those matters.

Respondent further answering saith, that during the years 1845–'6, and '7, he shipped to Rogers & Brothers, who were then commission merchants in the city of Cincinnati, State of Ohio, large quantities of Kanawha salt, to be sold by them and accounted for to respondent for the usual commissions for such services. During the period aforesaid, the said Rogers & Brothers furnished the respondent, when called on so to do, their acceptances in such reasonable sums, (having in view the large shipment of salt which respondent was making to them,) from time to time, as this respondent would demand of them; they would also furnish to respondent such supplies of groceries as he would occasionally, and from time to time, order for his own use. The said Rogers & Brothers, some time ago, furnished respondent with accounts showing aggregate proceeds of portions of said salt so shipped to them as aforesaid, which large quantities of said salt, the said Rogers & Brothers, although repeatedly called on for the purpose, have wholly failed and refused to account for to this respondent, and large quantities of said salt still remain wholly unaccounted for by the said Rogers & Brothers; under these circumstances, there never having been a settlement and final adjustment between respondent and Rogers & Brothers of their accounts, it is impossible for respondent to tell with any exact-

ness what amount he is indebted to said Rogers & Brothers, if he owes them any thing; and it can only be ascertained by a final adjustment of the accounts of Rogers & Brothers and himself, whether he is their debtor or they his.

This respondent, having fully answered, denies all fraud, combination, &c., and prays that he may be dismissed with his reasonable costs.

SAMUEL HY. EARLY.

A. PARKS, *Solicitor.*

VIRGINIA, *Kanawha county, to wit:*

This day, Samuel H. Early personally appeared before me, the undersigned justice of the peace in and for the county aforesaid, and made oath that the matters and things contained in the annexed answer, so far as stated on his own knowledge, are true, and so far as stated from the information of others, he believes to be true.

Given under my hand this day of June, 1850.

WILLIAM GILLISON,
Justice of the peace.

And at a court held as aforesaid, 22d day of May, 1850, on motion of the complainant by counsel, it is ordered that Charles Hedrick, James M. Laidley, and Geo. W. Carr, be appointed commissioners to value the real estate of the absent defendant, John Rogers, in the bill mentioned, and make report thereof on oath to the next term of this court.

Decree.

And at a court held as aforesaid, 21st day of June, 1851, this cause came on to be heard on the bill and exhibits therewith filed, on the bill taken for confessed against the *the* absent defendants, John and and Joseph Rogers, after order of publication duly executed on the evidence filed in the cause, and on the reports of the special commissioners, James M. Laidley, Charles Hedrick and Geo. W. Carr, and was argued by counsel; and it appearing to the court that the personal fund belonging to the defendant, which is in the power of the court, is insufficient for the satisfaction of his debt to the complainant appearing to be due, and it further appearing to the court that the complainant has filed in the clerk's office a bond with good security in double the value of the lands hereinafter decreed to be sold, for performing the future orders and decrees in this cause: the court doth order, decree, and adjudge, that the sheriff of this county do, after advertising the time and place, &c., of sale in some public newspaper published in Charleston for thirty days previous, sell the estate and interest of the said John Rogers in the lands and tenements situate in the town of Charleston, which are described in the exhibits, 1, 2, 3, 4 and 5, in the bill mentioned, or so much thereof as may be necessary to pay the debt to complainant hereinafter mentioned, to the highest bidder for cash, as

to one-third of the purchase money, and on a credit for the balance of 6 months, for one-third, and twelve months for the other third, taking bond with good security for the deferred payments; and from the proceeds of the sale which he is hereby directed to collect, the said commissioner do pay to the complainant the sum of nine hundred dollars, the amount appearing to be due on the bill of exchange in the bill mentioned, with interest thereon from the 27th day of April, 1849, till paid, and one per cent. per annum damages on said sum of nine hundred dollars from said 27th day of April, 1849, till paid, and his costs in this suit, and make report of his proceedings in the premises to this court; and liberty is reserved to the absent defendant, John Rogers, to appear within the time prescribed by law, and file his petition to have his cause reheard, and claim such relief therein as the statute in that case made and provided entitles him to.

Decree.

And at a court held as aforesaid, the 20th day of November, 1851, this cause came on to be further heard on the bills, office, decrees, exhibits, evidences, &c., which formed the basis of the decree rendered at the last term of this court, and on the answer of the home defendant, William D. Shrewsbery, and was argued by counsel.

And the complainant declining to pursue his remedy against the real estate of the defendant as provided for in the decree aforesaid, because of its being encumbered by prior liens, and the court being of the opinion that John Rogers could not pledge the assets of the firm of Rogers and Bros. to indemnify his sureties for his private debts, and remove the partnership fund by such pledge from the partnership creditors, doth adjudge, decree, and order, that the said defendant, William D. Shrewsbery, pay to the complainant the sum of $900, with interest from the first day of June, 1849, the date of service of the subpœna in the cause on the said defendant, William D. Shrewsbery; the said sum of $900 with interest as aforesaid, being part of the sum which appears to be owing and is decreed to be due the complainant by the absent defendants, John and Joseph Rogers, as appears by the aforesaid former decree of this court at the last term. But said complainant shall not have the benefit of this decree until he shall first file with the clerk of this court a bond with approved security in double the amount herein decreed to be paid by said Shrewsbery, conditioned to abide such future order as may be made for restoring the said sum of money to said absent defendants, upon their appearing and answering the bill within the time prescribed by law. And liberty is reserved to the said absent defendants to appear within the time prescribed by law and file their petition to have this cause reheard, and have such relief as the law entitles them to.

Judgment on forthcoming bond.

And at another day, to wit, at a court held as aforesaid, on the 5th day of June, 1852—Nathaniel V. Wilson vs. William D. Shrewsbery

and John D. Lewis—on motion for the award of execution on a forfeited forthcoming bond—this day came the plaintiff by his attorney, and notice of this motion being proved, the defendants were solemnly called but came not; execution is therefore awarded the plaintiff against them for $2,150 00, the penalty of said bond, and the costs of this motion; but the said execution may be discharged by the payment of $1,084 35 cts., with legal interest thereon from the 1st day of April, 1852, until paid, and the costs aforesaid.

Teste: A. W. QUARRIER, *Clerk.*

One in behalf of Robert H. Early against the said parties as follows, to wit:

VIRGINIA, *sc.*

ROBERT H. EARLY
vs.
SAMUEL H. EARLY. } Record.

Pleas before the judge of our circuit court, for Kanawha county, at the court-house thereof, on the 26th day of August, 1852, and in the 77th year of said Commonwealth.

Be it remembered, that heretofore, to wit, on the 26th day of August, 1852, came Robert H. Early by his attorney, and sued out of the clerk's office of the said circuit court, for Kanawha county, a suggestion and summons against Samuel H. Early, which, together with the sheriff's return thereon, are in the words and figures following, to wit:

Suggestion.

To the honorable judge of the circuit court of Kanawha county:

Your petitioner showeth that he caused to be issued out of the clerk's office on the 12th day of June, 1850, a writ of capias ad respondendum against John Rogers, jr., and Joseph Rogers, surviving partners of themselves and Alfred Rogers, deceased, late partners under the style and firm of Rogers and Bros., and at the fall term, 1850, of said court obtained judgment against the said John Rogers, jr., upon whom alone the said writ was served, for the sum of $622 22 cts., with interest thereon from the 12th day of June, 1850, till paid, and $9 91 cts. as costs; that two writs of fi. fa. were sued out on said judgment, (according to law,) which were returned, no property found; and that said judgment remain unpaid to this day; that your petitioner hath since sued out another writ of fi. fa. on said judgment, and placed the same in the hands of the sheriff of said county, whereby your petitioner hath obtained a lien on all the personal property of the said John Rogers, jr., and suggests that, by reason of the lien of his last said writ, that there is a liability on a certain Samuel H. Early, of said county of Kanawha, who hath in his hands money or effects belonging to the said Rogers and Bros., of which the said John Rogers, jr., is a partner, and to the said John Rogers, jr.; and your petitioner prays that a sum-

mons may be issued against the said Samuel H. Early out of the said office of the circuit court of said county, to answer this suggestion, returnable to the next term of said court.

ROBERT H. EARLY,
By his counsel, JNO. J. WILLIAMS.

August 26th, 1852.

Summons.

The Commonwealth of Virginia, to the sheriff of Kanawha county, greeting:

We command you that you summons Samuel H. Early to appear before the judge of our circuit court, for the county of Kanawha, at the court-house of the said county, on the first day of the next term, to answer the suggestion appended hereto, and have then and there this writ.

Witness Alexander W. Quarrier, clerk of our said court, at the court-house, this 26th day of August, 1852, and in the 77th year of the Commonwealth.

A. W. QUARRIER, *Clerk.*

Return.

Served the 26th of August, 1852, by delivering an office copy of the within suggestion and summons to Samuel H. Early.

JNO. SLACK, jr., *D.*,
For J. H. FRY, *Sheriff K. Co.*

In which condition this cause now remains.

Teste: A. W. QUARRIER, *Clerk.*

One in behalf of Noyes and Chappel against the same parties, as follows:

"VIRGINIA, *ss.*

NOYES & CHAPPELL
vs.
JOHN & JOS. H. ROGERS. } Record.

Pleas before the judge of the circuit court for Kanawha county, at the court-house thereof, on the 10th day of December, 1852, and in the 77th year of said Commonwealth.

Be it remembered that heretofore, to wit, at rules held in the clerk's office of the circuit court for Kanawha county, in the month of September, 1852, came Franklin Noyes and Henry Chappell by their attorney, and filed their declaration against John Rogers, jr., and Joseph H. Rogers, which is in the words and figures following, to wit:

Declaration.

CIRCUIT COURT FOR KANAWHA COUNTY,
Kanawha county, to wit:

Franklin Noyes, and Henry Chappell, late partners in trade, by the

name and style of Noyes & Chappell, the plaintiffs in this suit, complain of John Rogers and Joseph Rogers, partners in trade, under the style and name of Rogers & Brothers, (the defendants in this suit,) who have been summoned to answer the plaintiffs in an action on promises, for that the plaintiffs on the 19th day of December, 1848, at Cincinnati, made their bill of exchange in writing and directed the same to the defendants at Cincinnati, and thereby required the defendants to pay nine hundred dollars to the order of the plaintiffs, four months after the date thereof, for value received; which period had elapsed before the commencement of this suit, and the defendants then accepted the same bill and promised the plaintiffs to pay the same, according to the tenor and effect thereof, and of their said acceptance thereof, when the said bill of exchange became duly payable; and afterwards, to wit, on the 21st day of April, 1849, the plaintiffs duly presented the said bill of exchange at Cincinnati for payment; the defendants did not pay the same; and thereupon the said bill was then, to wit, on the 21st day of April, 1849, duly protested for non-payment, of which said protest the plaintiffs had due notice. For that also the plaintiffs, on the 19th day of December, 1848, at Cincinnati, made their bill of exchange in writing and directed the same to the defendants at Cincinnati, and thereby required these defendants to pay nine hundred dollars to the order of the plaintiffs, four months after the date thereof, for value received, which period had elapsed before the commencement of this suit, and the defendants then accepted the said bill and the plaintiffs endorsed the same to Samuel Hannah, who endorsed the same to T. M. Jackson; of all which the defendants then had due notice, and then promised the plaintiffs to pay the amount thereof according to the tenor and effect thereof, and of their acceptance thereof; yet afterwards, to wit, on the 21st day of April, 1849, when the said bill of exchange was duly presented to defendants for payment at Cincinnati aforesaid, the said defendants did not pay the same, and thereupon the said bill of exchange was then, to wit, on the day and year aforesaid, duly protested for non-payment and returned by the said T. M. Jackson to the plaintiffs, protested as aforesaid; of all which promises, and especially said protest, the plaintiffs had due notice. And that the said plaintiffs heretofore instituted suit against the defendants in the circuit superior court of chancery, for the recovery of the said sum due the plaintiffs from the defendants, in virtue of the said bill of exchange in the first and second counts of the declaration mentioned, to wit, $900, in which said suit the plaintiff became liable to pay, and did pay the sum of $36 45 cents, costs of said suit; and the defendants, in consideration that the plaintiffs would dismiss said suit, promised to pay the said plaintiffs the said sum of $36 45 cents, costs as aforesaid; yet, although the plaintiffs have long since dismissed said suit, the defendants have not as yet paid to the plaintiffs the said sum of $36 45 cts., or any part thereof. And for that the defendants afterwards, to wit, on the 19th day of December, 1848, were indebted to the plaintiffs in the further sum of $900, for the work and labor, care and diligence of the plaintiffs, by them the said plaintiffs before that

time done, performed and bestowed in and about the business of the defendants and for the defendants, and at their special instance and request; and also in the further sum of $900 for divers goods, wares and merchandise by the plaintiffs before that time sold and delivered to the defendants, and at their like special request and instance; and also in the further sum of $900, for money by the said plaintiffs before that time lent and advanced to, and paid, laid out and expended for the defendants, and at their like special instance and request; and also in the further sum of $900, for other money by the said defendants before that time had and received to and for the use of the plaintiffs; and being so indebted, they, the defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, undertook, and then and there faithfully promised the plaintiffs to pay the said several sums of money in this count mentioned, when they, the said defendants, should be thereunto afterwards requested, but did not pay the same. And for that the defendants afterwards, to wit, on the 19th day of December, 1848, accounted with the plaintiffs of and concerning divers other sums of money from the defendants to the plaintiffs before that time due and owing, and then in arrear and unpaid; and upon such accounting, the defendants were then found to be in arrear and indebted to plaintiffs in the further sum of $900, and being so found in arrear and indebted, afterwards, to wit, on the day and year last aforesaid, undertook and faithfully promised the plaintiffs to pay them the said last mentioned sum of money, when they, the said defendants, should be thereunto afterwards requested, but did not pay the same; nevertheless the defendants have disregarded all their said several promises and undertakings in the declaration and each count thereof mentioned, and have not as yet paid the said several sums of money, or any or either of them, or any part thereof to the plaintiffs, although often requested so to do, but the defendants to pay the plaintiffs the same have hitherto wholly neglected and refused, and still neglect and refuse, to the damage of the plaintiffs of $1,000, and therefore they bring their suit.

SMITH & SON.

And the said Noyes & Chappel, at the same rules, also filed their account against the said Rogers & Brothers, in the words and figures following, to wit:

Account.

ROGERS & BROTHERS,

To Noyes & Chappel, Dr.

Account stated - - - - - -	$900 00
Costs of suit, Rogers and Brothers, in circuit superior court of chancery - - - - - -	36 45
Costs of protest paid for you - - - -	2 75
December 19th, 1848.	$939 20

And on the fourth day of August, 1852, the said Noyes and Chappel, by their attorney, sued out of the clerk's office of the said court an attachment against the said John and Joseph Rogers—which attachment, together with the sheriff's return thereon, is in the words and figures following, to wit:

Attachment.

The Commonwealth of Virginia, to the sheriff of, or any constable of, Kanawha county, greeting:

Whereas, in a certain action of assumpsit wherein Franklin Noyes and Henry Chappell, late partners in trade by the name of Noyes and Chappel, plaintiffs, now pending in the circuit court of said county against John Rogers and Joseph Rogers, survivors of Alfred Rogers, partners under the name and style of Rogers and Brothers, defendants, the said Franklin Noyes hath made oath, that the said John Rogers, jr., and Joseph Rogers, as survivors aforesaid, are indebted him and Henry Chappel, partners by the name and style of Noyes & Chappel, for the use and benefit of him the said Noyes, for a balance due on bill of exchange, drawn by them on the firm of Rogers & Brothers, of whom the said John and Joseph are survivors, and accepted by them, the said Rogers & Brothers; which balance, on this 16th day of December, 1850, amounted to the sum of $697 13 cents, bearing interest from that date; also in the sum of $36 45 cents costs of suit of said Noyes and Chappel in same court in chancery, suit against same parties; both of which sums are justly due and owing to said plaintiffs for use of said Noyes from said defendants, for which they, the said plaintiffs, have cause of action; that neither of said defendants are residents of this Commonwealth, and that the affiant is informed and believes one Samuel H. Earley, a resident of said county of Kanawha, is indebted to the said defendants for an amount largely exceeding the sum so due as aforesaid, to said plaintiffs.

Therefore we command you to attach the estate of the said defendants, and the same to secure in your hands, or so to provide that it may be forthcoming, and liable to further proceedings thereupon to be had, before the said circuit court, at rules to be held in the clerk's office of said court, on the first Monday in September next; and that you then and there have this writ, and make return to the said court how you have executed the same.

Witness Alexander W. Quarrier, clerk of our said court, at the courthouse of said county, the 4th day of August, 1852, and in the 77th year of our foundation.

A. W. QUARRIER, *Cl'k.*

The sheriff will serve a copy of this attachment on Samuel H. Early, and summon him as garnishee to appear at the time and place mentioned in this writ.

Teste: A. W. QUARRIER, *Cl'k.*

Return.

The defendant having no estate in my county except what may be in the hands of Samuel H. Early, which I have attached, and summoned him as garnishee, as within directed, this 9th day of August, 1852.

JNO. SLACK, Jr., *D.*,
For J. H. FRY, *Sheriff K. Co.*

Common order.

Whereupon the said Joseph Rogers being summoned, and not appearing, on motion of the plaintiffs, by their attorney, it was ordered that judgment be entered for the *the* plaintiffs against the said defendant for what damage the plaintiffs had sustained by occasion of the non-performance of the promises and assumptions in the declaration mentioned, unless the said defendant should appear, and plead to issue at the then next rules.

Common order confirmed, and Writ of inquiry.

At which day, to wit, at rules held in the clerk's office aforesaid, in the month of October, 1852, the defendant, Joseph H. Rogers, still failing to appear, on motion of the plaintiffs, by their attorney, it was ordered that the last order made in this cause be confirmed, and that the plaintiffs' damages be ascertained by a jury at the then next term.

Pleas, &c.

And now at this day, to wit, at a circuit court held for Kanawha county, the 10th day of December, 1852, the same day and year first herein mentioned, came the parties, by their attorneys; and thereupon the defendant demurs generally to the plaintiffs' declaration, and to each count thereof, in which demurrers the plaintiffs join; and the demurrers of the defendant to the plaintiffs' declaration, and to each count thereof, being considered, it seems to the court here that the matters and things contained in the third count are not sufficient in law for the plaintiffs to maintain his action thereof against the defendant. It is therefore ordered that the demurrer to the said 3d count be sustained, and the same held for nought; and as to the demurrers of the defendant to the declaration, and to the remaining counts of the declaration, the same are overruled.

And the defendant for plea in this behalf pleads non-assumpsit, and puts himself on the county, and plaintiffs likewise.

Judgment.

Whereupon the office judgment and writ of inquiry are set aside; and neither party desiring that a jury should be empanneled to try the said issue, the court, in lieu of a jury, proceeded to try the same; and

after hearing the evidence, doth find the said issue for the plaintiffs, and doth assess the damages at $939 20 cents, with legal interest on $900, part thereof, from the 21st day of April, 1849, until paid, but subject to credits of $265, paid first of August, 1850, and 25 dollars paid 16th December, 1850; therefore it is considered that the plaintiffs recover against the defendants their damages aforesaid, with interest thereon as aforesaid, in form aforesaid assessed, but subject to the credits aforesaid, and the costs of suit.

Teste: A. W. QUARRIER, *Cl'k.*

One in behalf of Charles Hedrick against said John Rogers, said Early, in the words and figures following, to wit:

VIRGINIA, *sc.*

CHAS. HEDRICK
vs. } Record.
JOHN ROGERS & als.

Pleas before the judge of the circuit court for Kanawha county, at the court-house thereof, on the fourth day of November, 1852, and in the 77th year of said Commonwealth.

Be it remembered that heretofore, to wit, on the 28th day of August, 1852, came Charles Hedrick, by his attorney, and sued out of the clerk's office of said court a writ of summons against John Rogers and William D. Shrewsbury; which writ, together with the return thereon endorsed, is in the words and figures following, to wit:

Summons.

The Commonwealth of Virginia, to the sheriff of Kanawha county, greeting:

We command you that you summon John Rogers and William D. Shrewsbury, surviving obligors of themselves and Joel Shrewsbury, jr., deceased, if they be found in your bailiwick, to appear before the judge of our circuit court for the county of Kanawha, at rules to be held in the clerk's office, on the first Monday in September next, to answer Charles Hedrick of a plea of debt for $15,152 $\frac{50}{100}$, damage $50; and have then there this writ.

Witness Alexander W. Quarrier, clerk of our said court, at the court-house of our said county, the 28th day of August, 1852, and in the 77th year of the Commonwealth.

A. W. QUARRIER, *Cl'k.*

Return.

Served as to defendant, Shrewsbery, by delivering an office copy hereof to him on the 31st day of August, 1852; defendant Rogers not found.

JNO. SLACK, Jr., *D.*,
For J. H. FRY, *S. K. Co.*

And the said Charles Hedrick, by his attorney, on the same day sued out of the clerk's office aforesaid an attachment, which, together with the sheriff's return thereon, is in the words and figures following, to wit:

Attachment.

The Commonwealth of Virginia, to the sheriff or any constable of Kanawha county, greeting:

Whereas Charles Hedrick, plaintiff in a certain action of debt now pending in the circuit court of said county against John Rogers and William D. Shrewsbery, surviving obligors of themselves, and Joel Shrewsbery, jr., deceased, defendants, hath made oath that John Rogers and William D. Shrewsbery, the above named defendants, are justly indebted to him, as commissioner in the case of A. Donnelly *vs.* Shrewsbery and others, in the sum of $3,788 12½ cts., due the 21st day of February, 1849; the like sum due the 21st day of February, 1850; the like sum due the 21st day of February, 1851; the like sum due the 21st day of February, 1852, by bond, amounting in all to $15,152 50 cts., principal, with lawful interest on the several sums, from the time they were respectively due, subject to an equitable credit of not exceeding $800, true amount not recollected, for his shares of various payments of money made by Messrs. Dickenson & Shrewsbery in same case, and to not exceeding twice that sum for like shares which are in dispute between him and Charles L. Shrewsbery, and the administrator of Joel Shrewsbery, jr., deceased, if the court shall decide that he owes the same; for which four first mentioned sums, subject to the credits aforesaid, there is present cause of action; that the said John Rogers is not a resident of this State; and that affiant believes he has estate or debts due him in the county aforesaid.

Therefore we command you to attach the goods and chattels and real estate of the above named defendant, John Rogers, and the same to secure in your hands, or so to provide that it may be forthcoming and liable to further proceedings thereupon, before the said circuit court, at rules, to be held in the clerk's office of the said court, in the month of September next; and that you then and there have this writ.

Witness Alexander W. Quarrier, clerk of our said court, at the court-house of said county, the 28th day of August, 1852, and in the 77th year of our foundation.

Teste: A. W. QUARRIER, *Clerk.*

The sheriff is directed to summons as garnishees John N. Clarkson, Samuel H. Early, Robert H. Early, Joseph H. Rogers, Joseph Frind, William D. Shrewsbery and Samuel A. Miller, Frederick Brooks, Andrew F. Donnelly, John N. Clarkson and Job English; the four last mentioned the active agents and partners of the firm of Ruffner, Donnelly & Co.

Teste: A. W. QUARRIER, *Clerk.*

Return.

The within named Job English, not being found and not at home, I served the within summons on him as garnishee, by delivering to his wife an office copy of the within attachment and summons, on the 2d day of September, 1852, at his house, and explained the purport thereof to her, she being a white person over 16 years of age, and a member of said English's family.

WM. M. ESTILL, *D.*
For J. H. FRY, *S. K. Co.*

The defendant, Rogers, has no property in my bailiwick liable to be attached, except what may be in the hands of the within named persons to be summoned as garnishers, which I have levied on, and summoned them as follows, as garnishers, to wit: R. H. Early, Samuel H. Early, Joseph H. Rogers and John N. Clarkson, as agents for Ruffner, Donnelly & Co., and in his individual capacity, by delivering each of them an office copy hereof, on the 28th day of August, 1852; and as to Frederick Brooks, A. F. Donnelly, Wm. D. Shrewsbery, by delivering to each of them an office copy as aforesaid, on the 30th and 31st days of August, 1852; and on the last mentioned day I pasted a like copy on the front door of the dwelling-house of S. A. Miller, he not being found at home, nor no white member of his family with whom to leave it.

JNO. SLACK, JR., *D.*
For J. H. FRY, *S. K. Co.*

(PARKS & WMS.)

And at another day, to wit, at rules held in the clerk's office of the circuit court for Kanawha county, in the month of September, 1852, came the plaintiff, by his attorney, and filed his declaration and bond on which this action is founded; which declaration and bond are in the words and figures following, to wit:

Declaration.

VIRGINIA, *Kanawha co., to wit:*

Charles Hedrick complains of John Rogers, jr., and William D. Shrewsbery, survivors of Joel Shrewsbery, jr., deceased, who were duly summoned, &c., of a plea that they render unto *unto* him the sum of fifteen thousand one hundred and fifty-two dollars and fifty cents, which to him they owe, and from him unjustly detain: For that the said defendant and the said Joel Shrewsbery in his lifetime, heretofore, to wit, on the 21st day of February, 1848, at the county aforesaid, by their certain writing obligatory, sealed with their seals, and to the court now here shown, the date whereof is the day and year aforesaid, promised and bound themselves, their heirs, &c., that they and each of them would pay to the plaintiff, (special commissioner in a suit in chancery on the chancery side of the circuit superior court of law

and chancery of Kanawha county, in the name of A. Donnelly vs. Shrewsbery and others, defendants,) the sum of fifteen thousand one hundred and fifty-two dollars and fifty cents above demanded, by four equal instalments as follows: the sum of three thousand seven hundred and eighty-eight dollars and twelve and a half cents, one year after date thereof; the like sum of $3,788 12½ cents, two years after the date thereof; the like sum of $3,788 12½ cents, three years after the date thereof; the like sum of $3,788 12½ cents, four years after the date thereof, being deferred instalments for three tracts, pieces, or parcels of land and premises sold on the day and year aforesaid, by said plaintiff, pursuant to the decree of said court, rendered in said cause at the fall term, 1847, &c. Nevertheless, the said defendants in the lifetime of the said Joel Shrewsbery, jr., did not, nor did the said Joel, pay the said sum above demanded, or any part thereof, to the said plaintiff, nor have the said defendants, or either of them, since the death of said Joel, paid the sum or any part thereof, (although often requested so to do) but to pay the same have hitherto wholly neglected and refused, and still do refuse, to the damage of said plaintiff of $50, and therefore he sues, &c.

PARKS, WILLIAMS & HEDRICK.

Bond.

$15,152 $\frac{50}{100}$.

We, John Rogers, jr., and William D. Shrewsbery and Joel Shrewsbery, jr., and each of us, promise and bind ourselves, our heirs, &c., to pay to Charles Hedrick, special commissioner in a suit now pending on the chancery side of the circuit superior court of law and chancery of Kanawha county, in the name of A. Donnelly vs. Shrewsbery and others, defendants, the sum of fifteen thousand one hundred and fifty-two dollars and fifty cents, by four equal payments, as follows: the sum of three thousand seven hundered and eighty-eight dollars and twelve and a half cents, one year after the date hereof; the like sum of three thousand seven hundred and eighty-eight dollars and twelve and half cents, in two years after the date hereof; the like sum of three thousand seven hundred and eighty-eight dollars and twelve and half cents, three years after the date hereof; the like sum of three thousand seven hundred and eighty-eight dollars and twelve and a half cents, in four years after the date hereof, being deferred instalments for three tracts, pieces, or parcels of land and premises this day sold by said commissioner, pursuant to a decree of said court rendered in said cause at the fall term, 1847; said John Rogers, jr., being the purchaser of said three tracts, pieces, or parcels of land and premises, and said William D. Shrewsbery and Joel Shrewsbery, jr., security hereto; and the title to said three tracts, pieces, or parcels of land and premises being retained as further security for the payment hereof. In witness of all which we

3F14.

have hereunto severally set our hands and seals this the twenty-first day of February, in the year 1848.

JN. ROGERS, JR. [SEAL.]
JOEL SHREWSBERY, JR. [SEAL.]
WILLIAM D. SHREWSBERY. [SEAL.]

Whereupon came the defendant, Joseph H. Rogers, by his attorney, and filed his answer to the attachment of the plaintiff; which answer is in the words and figures following, to wit:

Answer.

The answer of Joseph H. Rogers to the attachment filed against him and others in the circuit court of Kanawha county, by Charles Hedrick, in a certain action of debt in said court pending against John Rogers, jr., and William D. Shrewsbery, surviving obligors of themselves, and Joel Shrewsbery, jr., deceased. The said Joseph H. Rogers having been served with a copy of said attachment, for answer to the same saith, that he hath not now, or at the time of service of said attachment, any of the goods or chattels, or real estate or moneys, or securities or effects of any other kind whatsoever, of the said John Rogers, jr., in his hands, or in his possession, or under his control. It is true that the late firm of Rogers and Brothers, of which the said John Rogers, jr., was a member, have certain debts due them, and other funds and effects in this county and elsewhere, which were assigned in the latter part of the year 1851 to the said Joseph H. Rogers to collect the same, and the proceeds thereof to apply to the payment of the partnership debts due from the said Rogers & Brothers, which debts due from the said Rogers & Brothers as aforesaid are sufficient to absorb the whole of the partnership effects aforesaid; in addition to which the said John Rogers, jr., is justly indebted to the said firm of Rogers & Brothers, upon a settlement of the partnership accounts of said firm, to a very large amount, the true amount of which cannot be ascertained without a settlement of the partnership accounts of said firm.

J. H. ROGERS.

VIRGINIA, *Kanawha county, to wit:*

Joseph H. Rogers, the above named garnishee at the suit and attachment of Charles Hedrick, personally appeared before me, a justice of the peace in and for the said county of Kanawha, on the 31st of August, 1852, and made oath in due form of law, that the matters and things herein above stated, in his answer to said attachment, are true as he verily believes.

Given under my hand this 31st day of August, 1852.

JACOB GOSHOM, *J. P.*

Order of publication.

Whereupon the common order was taken against defendant Shrewsbury. And it appearing by affidavit filed that the above named defen-

dant, John Rogers, is a non-resident of the Commonwealth of Virginia, and the object of this suit being to recover the debt and interest aforesaid, and the costs of suit, it is ordered that he do appear within one month after due publication of this order, and do what is necessary to protect his interest in the premises.

Teste: A. W. QUARRIER, *Clerk*.

Sept. 8th, 1852.

Pleas.

And at rules held as aforesaid, in the month of October, 1852, the common order was confirmed against the defendant Shrewsbury, and cause set for trial as to him.

And now at this day, to wit, at a circuit court held for Kanawha county, the 4th day of November, 1852, came the parties by their attorneys, and thereupon the defendant plead payment; to which plea the plaintiff replies generally, and puts himself on the country; and the defendant doth the like. Whereupon the office judgment is set aside.

In which condition this cause now remains.

Teste: A. W. QUARRIER, *Clerk*.

One in behalf of William Featherston, administrator of Abraham Dehaven, against John Rogers, in the words and figures following, to wit:

VIRGINIA, *ss.*

Adm'r of A. DEHAVEN
vs.
JOHN ROGERS & others. } Record.

Pleas before the judge of the circuit court for Kanawha county, at the court-house thereof, on the 15th day of November, 1851, and in the 76th year of the Commonwealth aforesaid.

Be it remembered, that heretofore, to wit, at rules held in the clerk's office of the circuit court for Kanawha county, in the month of August, 1850, came William M. Featherston, administrator of Abraham Dehaven, deceased, by his counsel, and filed his bill of complaint against John Rogers and others; which bill, together with the exhibits therewith filed, is in the words and figures following, to wit:

Bill.

To the Hon. Mathew Dunbar, judge of the circuit court of Kanawha county: Humbly complaining, *herewith* unto your honor, your orator, William M. Featherston, administrator of Abraham De Haven, deceased, that a certain Joel Shrewsbery, of Kanawha county, now deceased, hired of your orator a negro man slave, called Bill, belonging to his intestate's estate, for the sum of $90, and executed therefor his note signed Rogers & Shrewsbery, dated August, 1848, herewith filed,

marked A. That the hiring was made, and the note was signed, as said Shrewsbery informed your orator, for the benefit of himself and a certain John Rogers, a non-resident of the State of Virginia, whose partner and agent he, said Shrewsbery, was. That the said negro was hired for, and employed in, the business of salt-making, at a furnace in Kanawha salines, the joint property of John Rogers and Joel Shrewsby, then under management of Shrewsby, but the proceeds were entirely under the control, and were regularly shipped to said Rogers, and appropriated by him to his own use; and that said Shrewsbery was the partner and duly authorized agent of said Rogers, to hire the labor and provide means, &c., for running the furnace; and in the exercise of said agency hired the said negro of your orator, on the credit mainly of said Rogers, and signed their joint note marked A, as aforesaid. That said Shrewsbery has since died insolvent, and administration of his estate committed to John P. Turner, sheriff of Kanawha county.

Your orator further represents, that subsequent to the death of Shrewsbery, the said John Rogers hired from your orator the said negro man Bill, for the purpose of running the same furnace of Rogers & Shrewsbery, for the year 1849, and executed his own note for his hire in the sum of $55, payable on the 1st January, 1850. Said note is herewith filed, marked B.

Your orator further represents, that the said Rogers is seised and possessed of valuable real and personal estate within the county of Kanawha, to wit: A lot of land in the town of Charleston, situate on Front street, on the south side thereof, next below the tenement of John Trugeon, and conveyed to said Rogers, Joel, William, and Charles Shrewsbery by George Mitchell, by deed bearing date the 6th day of April, 1839.

2d. A lot of land on same street nearly opposite the former, and next below the tenement of A. H. Beach, and conveyed to same parties by John Meigs and wife, by deed bearing date 6th April, 1839.

3d. A lot on same street, and south side thereof, conveyed by James Wilson to said William and Joel Shrewsbery, and said Rogers, by deed dated 3d March, 1831. The lot and tenement is now occupied by Wm. F. Goshom & Co.

4th. A lot on same street, and same side, adjoining conveyed to said Rogers, Joel, William, and Charles Shrewsby by Henry C. Anderson, by deed bearing date on day of 18 .

5th. A lot on same street, and same side, adjacent and above the lot lately owned by Gabriel Gorman, conveyed to said Rogers, to Joel, William, and Charles Shrewsby, James A. Lewis, by deed bearing date the of October, 1830, (improved.)

That said John Rogers is seised of one undivided fourth part of each of the aforesaid lots 1, 2, and 4, and of one undivided third part of Nos. 3 and 5, the other interests being owned by the said William, Charles, and Joel Shrewsbery, or persons holding under them. (Copies of said deeds C, D, E, F, and G, are herewith filed.)

Your orator further saith, that the said John Rogers was seised of a

large and valuable interest in a certain salt property situate in Kanawha salines, and known as the dead property, which last has been sold under a decree of the circuit sup. court, Kanawha county, in the cause of , to which reference is hereby made. That said sale was made for a division and to the extent of his interest; the said Rogers was entitled to the proceeds thereof; that said Rogers became the purchaser of said dead property, at the judicial sale aforesaid. That your orator is not advised whether said Rogers has paid the purchase money, and completed his title thereto; but he is advised that a portion of the purchase money is in the hands of Charles Hedrick, esq., commissioner of the court, who is charged with a collection of the proceeds of said sale.

Your orator further states, that a certain John N. Clarkson, Samuel H. Early, and William D. Shrewsbery, are, as he is advised, each indebted to Rogers & Bros., of which firm said John Rogers is a partner, in divers large sums of money, for merchandise sold and delivered them, money loaned, &c., but the amount of said indebtedness your orator is not advised of. Now, in tender consideration of the promises, your orator prays, that John N. Clarkson, Samuel H. Early, William D. Shrewsbery, and John P. Turner, administrator of the estate of Joel Shrewsbery, jr., deceased, and Charles Hedrick, be made defendants to this bill, and answer the same, and the several allegations thereof, on oath. That the said Clarkson, Early, and Shrewsbery may state particularly the amount of indebtedness, if any, which they owe the said Rogers, or Rogers & Bros.; that they may be inhibited and restrained from paying over to said Rogers, or Rogers & Bros., any part of said indebtedness, but that your orator's debts, due from said Rogers, be first satisfied out of the same, to the amount of his, Rogers's, interest therein. That Charles Hedrick may be inhibited and enjoined from paying over to said Rogers any part of the proceeds of the said dead property, but that Rogers's interest therein may be subjected to payment of your orator's claims; and that said Rogers's interest, whether in the dead property or its proceeds, be also subjected to the satisfaction of your orator's said debts. That the interest which the said Rogers holds in the said several parcels of real estate Nos. 1, 2, 3, 4, and 5, be also subject to the payment of said debts, with such other and further relief as may seem consistent with equity and good conscience. And your orator will ever pray, &c.

WM. M. FEATHERSTON,
Adm'r of A. Dehaven, deceased, by counsel.
READ & CARR, *Sols.*

Whereupon, on a motion of the complainant, by his counsel, the decree nisi is awarded against the defendants.

Order of publication.

And at rules held as aforesaid in the month of March, 1850, the defendant, John Rogers, not having entered his appearance and given

security according to the act of assembly and the rules of this court, and it appearing by satisfactory evidence that he is not a resident of this State, it is ordered, that he appear here on the first day of the next term of the said court, and answer the complainants' bill, and that a copy of this order be forthwith inserted in the Kanawha Republican, a paper published in this county, for two months successively, and posted at the front door of the court-house of said county.

Teste: A. W. QUARRIER, *Clerk*.

March 13th.

And at rules held as aforesaid, in the month of October, 1850, came the complainant, by his counsel, and thereupon the subpœna in this cause, and the order of publication being duly executed, on his motion, the bill is taken for confessed, and this cause is set for hearing.

And at another day, to wit, at a circuit court held for Kanawha county, the 20th day of June, 1851, ordered that Charles Hedrick, James M. Laidly, and George W. Carr be appointed commissioners to value the real estate of the absent defendant, John Rogers, in the bill mentioned, and make report thereof on oath to the next term of this court.

And at a court held as aforesaid, October, 1851, on motion of the defendant, Charles Carter, he hath leave to file his answer to the complainants' bill, whereupon the said answer is filed accordingly.

And at another day, to wit, at a circuit court held as aforesaid, the first day of November, 1851, this cause came on to be heard on the bill and the exhibits filed therewith, on the bill taken for confessed against the absent defendant, John Rogers, after order of publication had and duly executed on the bill taken for confessed against the home defendant, John P. Turner, administrator of Joel Shrewsbery, jr., deceased, and on the testimony filed in the cause, and was argued by counsel; whereupon the court doth adjudge, order, and decree that the defendant, John Rogers, pay to the complainant the sum of fifty-five dollars, with legal interest thereon from the first day of January, 1850, until paid; and that the said John P. Turner, administrator of Joel Shrewsbery, jr., deceased, pay to the complainant the sum of ninety dollars, with legal interest thereon from 19th of August, 1848, until paid, from the assets of his intestate's estate, if any there be, and that the said defendants pay the complainants their costs.

And at another day, to wit, at a circuit court held as aforesaid, the 3d day of November, 1851, the home defendant, John N. Clarkson, having been duly served with process summoning him to answer the complainants' bill more than two months ago, and he hitherto having failed to obey said process, on motion of complainants' counsel, it is ordered that he be summoned to appear here forthwith, to show cause, if he can, why he shall not be attached for his contempt.

And the said John N. Clarkson having filed his answer to the said bill, the same is in the following words, &c.:

Answer of defendant, John N. Clarkson.

"To the honorable judge of the circuit court of Kanawha county.

The separate answer of John N. Clarkson to the bill filed by the administrator of Abraham De Haven, administrator, &c., against respondent and others: The said respondent, for answer to so much of said bill as he is advised is material for him to answer to, saith, that he knows nothing of the matters alleged in said bill of his own knowledge, except that portion of the bill which charges respondent with being largely indebted to the late firm of Rogers & Brothers. In relation to this matter respondent states, that at the time the subpœna was served on him in this cause, he did not know what sum he was indebted to said firm, if he were indebted at all; since that period respondent states, that he and John Rogers have had a settlement of their accounts, and as a compromise of their unsettled accounts respondent confessed judgment to them, with a stay of execution for 12 months; and respondent gave said Rogers & Brothers his (respondent's) acceptances, four in number, for $1,000 each, payable in 3, 6, 9, and 12 months from the date of them, which was some five or six weeks ago; that at that time respondent was under the impression and believed, that this cause had been discontinued and dismissed as to respondent; these acceptances, respondent supposes, have been endorsed and transferred by said Rogers & Brothers to some third person. If not, respondent will owe said Rogers & Brothers, when said acceptances mature, the several amounts thereof. They are dated about the 20th of September, 1851.

JOHN N. CLARKSON.

John N. Clarkson states that the allegations of the foregoing answer are true in substance and in fact, to the best of his knowledge and belief. Sworn to in open court, 3d November, 1851.

Teste: A. W. QUARRIER, *Clerk*.

Decree.

And now at this day, to wit, at a circuit court held for Kanawha county, the 15th day of November, 1851, the same day and year herein first mentioned, this cause came on to be further heard on the answer of the home defendant, John N. Clarkson, filed since the decree rendered against the absent defendants, John and Joseph Rogers and John P. Turner, administrator of Joel Shrewsbery, jr., deceased, at the present term of this court, and was argued by counsel; wherefore the court doth adjudge, order, and decree that the said defendant, John N. Clarkson, pay to the complainant the sum of 55 dollars, with interest from the first day of January, 1850, till paid, and the costs of this suit; the said sum of 55 dollars, with interest, &c., and the said costs being a portion of the debt which by the aforesaid answer of the aforesaid Clarkson, he acknowledges to have been due to said Rogers & Brothers at the date of the service of the subpœna in this cause, though not as-

certained until a subsequent settlement. But it is further decreed, that the aforesaid sum of $55, with interest and costs as aforesaid, shall not be due and payable under this decree until after three months from the 17th of September, 1851, the time of the judgment rendered against him in the U. D. court, in favor of said Rogers, as appears by a copy of the said judgment filed in the cause, marked (E,) the said term of three months being the time when the first bill of exchange in the answer mentioned comes to maturity; but if the said first bill of exchange shall have been negotiated before notice of this decree, then the said 55 dollars, with interest and costs as aforesaid, shall be paid at the maturity of said bill of exchange in said answer mentioned, which shall first become due and payable; but if all of said bills of exchange shall have been negotiated, then the said sum of 55 dollars, with said interest and costs of this suit, shall be paid by the said John N. Clarkson on the 17th day of September, 1852.

Teste: A. W. QUARRIER, *Clerk.*

One in behalf of Crockett Ingles against John and Joseph Rogers and others, in the following words and figures:

VIRGINIA, *ss:*

CROCKETT INGLES
vs.
JOHN & JOS. ROGERS and others. } Record.

Pleas before the judge of our circuit court for Kanawha county, at the court-house thereof, the 3rd day of December, 1851, and in the 76th year of said Commonwealth.

Be it remembered that heretofore, to wit, on the 5th day of April, 1851, came Crockett Ingles by his attorney, and sued out of the clerk's office of said court a writ of summons against John Rogers and Joseph Rogers, surv's, &c., which writ, with the sheriff's return thereon endorsed, is in the words and figures following, to wit:

Summons.

The Commonwealth of Virginia, to the sheriff of Kanawha county, greeting:

We command you that you summon John Rogers and Joseph Rogers, survivors of themselves and Alfred Rogers, deceased, late partners, trading under the firm of Rogers & Bros., if they be found in your bailiwick, to appear before the judge of our circuit court, for the county of Kanawha, at rules to be held in the clerk's office therefor, on the first Monday in April, the present month, to answer Crockett Ingalls of a plea of debt of $200, damages 30 dollars; and have then and there this writ.

Witness Alexander W. Quarrier, clerk of our said court, at the court-house, the 5th day of April, 1851, and in the 75th year of the Commonwealth.

A. W. QUARRIER, *Clerk.*

Return.

Not served because the defendant is not found, and has no place of residence in my county.

J. H. FRY, *D.*
For J. HANSFORD, *S. K. C.*

And on the 8th day of April, 1851, the said plaintiffs, by their attorney, also sued out of the said clerk's office an attachment in the suit so instituted, which attachment, together with the sheriff's return thereon endorsed, is in the words and figures following, to wit:

Attachment.

The Commonwealth of Virginia, to the sheriff or any constable of Kanawha county, greeting:

Whereas Crockett Ingles, plaintiff in a certain action of debt now pending in the circuit court of Kanawha county, against John Rogers and Joseph Rogers, survivors of Alfred Rogers, deceased, defendants, have this day made oath, that John Rogers, one of said defendants, is a non-resident of this State; that he has just claim against the defendant for the sum of $200, with interest from the 27th day of January, 1849, until paid, subject to a credit of $13 89 cts., and that the said defendant has estate and debts due him within the county of Kanawha.

Therefore we command you to attach the estate of the said John Rogers, and the same to secure in your hands, or so to provide that the same may be forthcoming and liable to further proceedings thereupon, to be had before the said circuit court, at rules to be held in the clerk's office thereof on the first Monday of May next; and that you then and there have this writ, and make return to the said court how you have executed the same.

Witness Alexander W. Quarrier, clerk of our said court, at the courthouse of said county, the 8th day of April, 1851, and in the 75th year of our foundation.

A. W. QUARRIER, *Clerk.*

Endorsement.

This writ is to be served on Samuel H. Early, John N. Clarkson and William D. Shrewsbury. Also summon each of them as garnishees, to appear on the first day of the spring term next of the circuit court of this county; also attach all the real and other estate of said John Rogers, in your county.

Teste: A. W. QUARRIER, *Clerk.*

Sheriff's return.

I have served this attachment as to Samuel H. Early and William D. Shrewsbury, by delivering to each of them an office copy hereof, on the 9th day of April, 1851, when also I summoned them as gar-

nishees for John Rogers, to appear before the judge of the circuit court for Kanawha county, on the first day of the next term of said court.

G. A. GOSHOM, *D.*
For JNO. HANSFORD, *S. K. co.*

And I have served it on John N. Clarkson the same day and in the same manner, summoning him also to appear before the judge of the circuit court of the county of Kanawha, on the first day of the next term of said court, as a garnishee for John Rogers.

And I have furthermore levied this attachment on the interest and claim of the said John Rogers in and to three tracts of land lying on the north-west side of Kanawha river, opposite the town of Brownstown, in Kanawha salines, known as the "dead property" and the "Race-ground tract," being lot No. 1, and lot No. 2, containing respectively 80 acres and 72 acres, with small fractions, and also a hill tract adjoining or near the same, containing 793 acres, as sold to said Rogers by Charles Hedrick, a commissioner appointed by this court to sell the lands of the old Kanawha Salt Company, in the case of Andrew Donnelly vs. Dickenson and others, as appears by his report and plat, filed in said suit, on the 6th day of July, 1848.

J. H. FRY, *D.*
For J. HANSFORD, *S. K. Co.*

Order of publication.

And it appearing by affidavit that the defendants are not residents of this Commonwealth, it was ordered that the said defendants do appear within one month after due publication of this order, and do what is necessary to protect their interests; and that a copy of this order be published once a week for four successive weeks, in the Western Virginian, and posted at the front door of the court-house of said county, on the first day of April court next.

Teste: A. W. QUARRIER, *Clerk.*
April 8th, 1851.

And on the 20th day of September, 1851, came the defendant, John N. Clarkson, and filed his answer to the attachment awarded against him in this cause, in the words and figures following, to wit:

Answer of John N. Clarkson.

To the honorable judge of the circuit court of the county of Kanawha.

The separate answer of John N. Clarkson to the attachment awarded against him at the instance of the plaintiff in the case of Crockett Ingals vs. John Rogers & Bros.

The said respondent, for answer to so much of said attachment as he is advised it is material for him to answer to, saith: That he knows nothing of the matter alleged in said attachment, of his own knowledge, except that portion of the attachment which charges respondent with being largely indebted to the late firm of Rogers & Bros. In re-

lation to this matter, respondent states that at the time the subpœna in the case of Abraham Dehaven, administrator, &c., vs. respondent and others, was served upon him in that case, he did not know what sum he was indebted to said firm, if he were indebted at all; since that period respondent states that he and John Rogers have had a settlement of their accounts, and as a compromise of their unsettled accounts respondent confessed a judgment to them, with stay of execution for 12 months, and respondent gave said Rogers & Bros., his (respondent's) acceptances, four in number for $1000 each, payable in 3, 6, 9, & 12 months from the date of them, which was some 5 or 6 weeks ago; that at that time respondent was under the impression and believed that this cause had been discontinued or dismissed as to respondent. These acceptances, respondent supposes, have been endorsed and transferred by said Rogers to some third person; if not, respondent will owe said Rogers & Bros., when said acceptances mature, the several amounts thereof; they are dated about the 20th of September, 1851.

(Signed) JOHN N. CLARKSON.

November 12th, 1851. It is agreed to accept the within statement of his, John N. Clarkson's, indebtedness to Rogers & Bros., as an answer to the summons issued against him as home defendant in this cause, to say what his indebtedness was at the service of the said summons.

J. HEAD.

Judgment.

And now, at this day, to wit, at a circuit court held for Kanawha county, the third day of December, 1851, came the plaintiff, by his attorney; and it appearing that the order of publication awarded in this cause hath been completed more than one month ago, the defendants were solemnly called, but came not. Whereupon the evidence of the plaintiff's demand against the defendants being seen and inspected, it is considered by the court that the plaintiff recover against the said defendants the sum of 200 dollars, the amount appearing to be due from them to him in this action, with legal interest thereon from the first day of January, 1849, until paid, and the costs of this suit—subject, however, to a credit for $13 89 cents paid thereon; and the attachment in this cause being returned by the sheriff, that he had summoned John N. Clarkson, one of the garnishees required to be summoned in this suit; thereupon the said Clarkson filed his answer, stating what his indebtedness is to the defendants; which is taken and accepted by the plaintiffs as a full answer. And it appearing that said Clarkson by said answer is indebted to and liable to pay to the defendants, after satisfying the judgment heretofore rendered against them in favor of the same plaintiff, and ordered to be paid by him, in an amount more than sufficient to satisfy the plaintiff's demand in this action, it is ordered that the said Clarkson pay to said plaintiffs, out of the moneys in his hands belonging to said defendants, which he was liable to pay to them on the 9th of April, 1851, (the day he

was summoned as garnishee,) the amount of this judgment. And this cause is continued on the docket of this court for further proceedings to be had on said attachment, if other proceedings be deemed necessary.

The following are copies of the affidavit and order filed in this cause, on which this action and the attachment therein are founded:

Affidavit.

KANAWHA COUNTY, *to wit:*

Personally appeared before me, A. W. Quarrier, clerk of circuit court of Kanawha county aforesaid, Crockett Ingles, and made oath that John Rogers, defendant in a certain action of debt for $200, with interest from 27th day of January, 1849, until paid—subject to a credit of $13 $\frac{89}{100}$, instituted by affiant against said Rogers and one Joseph Rogers; that said John is a non-resident of this State; that he, the affiant, has just claim against the defendant for the said sum, with interest aforesaid, subject to the credit aforesaid, in said action; and that he, the said affiant, believes that said defendant has estate and debts due him within the county of Kanawha.

Given under my hand, this 7th day of April, 1851.

A. W. QUARRIER.

Order.

CHARLESTON, *January 27th*, 1849.

Messrs. SARGENT & WARD: Please settle two hundred dollars with Mr. C. Ingles, for which we will credit your account.

ROGERS & BROTHERS.

Endorsed on back as follows: April, 1850. Cr. by thirteen dollars and eighty-nine cents, paid C. E. Dodridge, per order.

C. INGLES.

Teste: A. W. QUARRIER, *Clerk.*

VIRGINIA, *ss.*

CROCKETT INGLES
vs.
JOHN & JOS. ROGERS, and others. } Record.

Pleas before the judge of the circuit court for Kanawha county, at the court-house thereof, on the 3d day of December, 1851, and in the 76th year of said Commonwealth.

Be it remembered that heretofore, to wit, on the 17th day of December, 1850, came Crockett Ingles, by his attorney, and sued out of the clerk's office of said court a writ of summons against John Rogers and Joseph H. Rogers, survivors, &c.; which writ, together with the sheriff's return thereon, is in the words and figures following, to wit:

Summons.

The Commonwealth of Virginia, to the sheriff of Kanawha county, greeting:

We command you that you summon John Rogers, jr., and Joseph Rogers, survivors, &c., if they be found in your bailiwick, to appear before the judge of our circuit court, for the county of Kanawha, at rules to be held in the clerk's office thereof on the first Monday in January next, to answer Crockett Ingalls of a plea of debt for 550 dollars—damage 30 dollars; and have then there this writ.

Witness Alexander W. Quarrier, clerk of our said court, at the court-house, the 17th day of December, 1850, and of our *the* Commonwealth the 75th. A. W. QUARRIER, *Clerk.*

Return.

Not found.

W. P. WOODS, *D.*,
For J. P. TURNER, *S. K. co.*

And the said plaintiff filed his affidavit, and bill, and protest; which are in the words and figures following, to wit:

Affidvait.

KANAWHA COUNTY, *to wit:*

Personally appeared before me, A. W. Quarrier, clerk of circuit court for the county aforesaid, Crockett Ingalls, and made oath that John Rogers, defendant in a certain action of debt instituted by affiant against said Rogers and one Joseph Rogers, for the benefit of Welch, Brooks & Co., is a non-resident of this State; that his, the affiant's, said assignee has just claim against the defendants for the sum of $516 50 cents in said action; and that he, the said affiant, believes that he, the said defendant, has estate and debts due him within the county of Kanawha.

Given under my hand, this 7th day of April, 1851.

A. W. QUARRIER, *Clerk.*

Bill.

$549. CHARLESTON, KA., *January 24th*, 1849.

One hundred twenty-six days after date pay to Robert H. Early or order five hundred forty-nine dollars, for value received, and place the same to account of—

Your obd't serv't, CROCKETT INGLES.

To Messrs. ROGERS & BROS., *Cincinnati, Ohio.*

Rogers & Brothers.

Endorsed on said bill: R. H. EARLY—Pay to S. M. Jackson, esq., cashier, or order. March 12th, 1850.—Paid on this one hundred two $\frac{68}{100}$ dollars to Wilcox, Dodridge & Co.

WILCOX, DODRIDGE & CO.

Protested for non-payment, June 2d, 1849.

JOHN F. KEYES, *N. P.*

Protest.

UNITED STATES OF AMERICA,
State of Ohio, sct.

By this public instrument of protest be it known, that on Saturday, the second day of June, in the year of our Lord one thousand eight hundred and forty-nine, I, John F. Keyes, notary public for the county Hamilton, in the State of Ohio, by lawful authority duly commissioned and sworn, living in the city of Cincinnati, in the county and State aforesaid, at the request of S. M. Jackson, esq., cashier of Franklin Branch Bank, holder of the original draft hereto attached, at the close of bank hours presented the same to Rogers & Bros., and demanded payment; they answer—"We cannot pay it."

Whereupon I, the said notary public, on the authority aforesaid, have protested, and do hereby solemnly protest, as well against the drawer of the said draft as against all other persons whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages, and interest suffered or to be suffered for the want of payment thereof.

Thus done and protested at Cincinnati, the day and year above written.

In testimony whereof I grant these presents, under my signature and [SEAL.] the impress of my notarial seal of office.

JOHN F. KEYES, *Notary public.*

And on another day, to wit, on the eighth day of April, 1851, came the plaintiff, by his attorney, and sued out of the clerk's office of the said court a writ of attachment against the said defendants, which said writ, together with the endorsement thereon, and the return of the sheriff, is in the words and figures following, to wit:

Attachment.

The Commonwealth of Virginia, to the sheriff or any constable of Kanawha county, greeting:

Whereas, Crockett Ingles, who sues for the benefit of Welch, Brooks & Co., plaintiff in a certain action of debt, now pending in the circuit court of Kanawha county, against John Rogers and Joseph Rogers, survivors of Alfred Rogers, deceased, defendants, has this day made oath that John Rogers, one of the said defendants, is a non-resident of this State; that he has just claim against him, the said defendant, for the sum of $\$516\frac{50}{100}$, and that the said defendant has estate and debts due him in the county of Kanawha:

Therefore, we command you to attach the estate of said John Rogers, and the same to secure in your hands, or so to provide that the same may be forthcoming, and liable to further proceedings thereupon, to be had before the said circuit court at rules held in the clerk's office thereof, on the first Monday in May next; and that you then and

Summons.

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Witness Alexander W. Quarrier, clerk of our said court, at the court-house, the 17th day of December, 1850, and of our *the* Commonwealth the 75th. A. W. QUARRIER, *Clerk*.

Return.

Not found.

W. P. WOODS, *D.*,
For J. P. TURNER, *S. K. co.*

And the said plaintiff filed his affidavit, and bill, and protest; which are in the words and figures following, to wit:

Affidvait.

KANAWHA COUNTY, *to wit:*

Personally appeared before me, A. W. Quarrier, clerk of circuit court for the county aforesaid, Crockett Ingalls, and made oath that John Rogers, defendant in a certain action of debt instituted by affiant against said Rogers and one Joseph Rogers, for the benefit of Welch, Brooks & Co., is a non-resident of this State; that his, the affiant's, said assignee has just claim against the defendants for the sum of $516 50 cents in said action; and that he, the said affiant, believes that he, the said defendant, has estate and debts due him within the county of Kanawha.

Given under my hand, this 7th day of April, 1851.

A. W. QUARRIER, *Clerk*.

Bill.

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One hundred twenty-six days after date pay to Robert H. Early or order five hundred forty-nine dollars, for value received, and place the same to account of—

Your obd't serv't, CROCKETT INGLES.

To Messrs. ROGERS & BROS., *Cincinnati, Ohio.*

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Endorsed on said bill: R. H. EARLY—Pay to S. M. Jackson, esq., cashier, or order. March 12th, 1850.—Paid on this one hundred two $\frac{68}{100}$ dollars to Wilcox, Dodridge & Co.

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Protested for non-payment, June 2d, 1849.

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UNITED STATES OF AMERICA,
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Whereupon I, the said notary public, on the authority aforesaid, have protested, and do hereby solemnly protest, as well against the drawer of the said draft as against all other persons whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages, and interest suffered or to be suffered for the want of payment thereof.

Thus done and protested at Cincinnati, the day and year above written.

In testimony whereof I grant these presents, under my signature and [SEAL.] the impress of my notarial seal of office.

JOHN F. KEYES, *Notary public.*

And on another day, to wit, on the eighth day of April, 1851, came the plaintiff, by his attorney, and sued out of the clerk's office of the said court a writ of attachment against the said defendants, which said writ, together with the endorsement thereon, and the return of the sheriff, is in the words and figures following, to wit:

Attachment.

The Commonwealth of Virginia, to the sheriff or any constable of Kanawha county, greeting:

Whereas, Crockett Ingles, who sues for the benefit of Welch, Brooks & Co., plaintiff in a certain action of debt, now pending in the circuit court of Kanawha county, against John Rogers and Joseph Rogers, survivors of Alfred Rogers, deceased, defendants, has this day made oath that John Rogers, one of the said defendants, is a non-resident of this State; that he has just claim against him, the said defendant, for the sum of $\$516\frac{50}{100}$, and that the said defendant has estate and debts due him in the county of Kanawha:

Therefore, we command you to attach the estate of said John Rogers, and the same to secure in your hands, or so to provide that the same may be forthcoming, and liable to further proceedings thereupon, to be had before the said circuit court at rules held in the clerk's office thereof, on the first Monday in May next; and that you then and

there have this writ, and make returns to said court how you have executed the same.

Witness Alexander W. Quarrier, clerk of our said court, at the court-house of said county, the 8th day of April, 1851, and in the 75th year of our foundation.

A. W. QUARRIER.

Endorsement.

Mr. Sheriff: Please deliver a copy of this attachment to William D. Shrewsbury, Samuel H. Early, and John N. Clarkson; and also summon each of them as garnishees in this cause, to the first day of the spring term next of the circuit court of this county; also, attach all the real and other estate of defendant, John Rogers, which may be found in your county.

Teste: A. W. QUARRIER, *Clerk.*

Return of sheriff.

I have served this attachment as to Sam'l H. Early and William D. Shrewsbury, by delivering to each of them a copy hereof, on the 9th day of April, 1851, when I also summoned them as garnishees for John Rogers, to appear before the judge of the circuit court of Kanawha co., on the first day of the next term of the said court.

G. A. GOSHOM, *D.*
For JNO. HANSFORD, *S. K. co.*

And I have served it on John N. Clarkson, on the same day and in the same manner, summoning him to appear before the judge of the circuit court of the county of Kanawha; also on the first day of the next term of said court as a garnishee for John Rogers; and I have furthermore levied this attachment on the interest and claim of said John Rogers, in and to three tracts of land lying on the northwest side of Kanawha, opposite to the town of Brownstown, known as the "dead property," and the "race tract," being lot No. 1, lot No. 2, containing, respectively, 80 acres, and 72 acres, with small fractions; also, a hill-side tract, adjoining or near the same, containing 793 acres, as sold to said Rogers by Charles Hedrick, a commissioner appointed by this court to sell the lands of the old Kanawha Salt Company, in the case of Andrew Donnelly vs. Dickenson and others, as appears by his report and plat filed in said suit on the 6th day of July, 1848. I am advised by plaintiff's counsel that defendant has no other property or estate in my county that I need levy on.

J. H. FRY, *D.*
For JNO. HANSFORD, *S. K. C.*

Order of publication.

And at rules held in the clerk's office of said court in the month of April, 1851, it appearing by affidavit that the defendants are non-residents of this State, it was ordered that the said defendants do appear

within one month after due publication of this order, and do what is necessary to protect their interests; and that a copy of this order be published once a week, for four weeks successively, in the Western Virginian, a newspaper published in this county, and posted at the front door of said county on the first day of April court next.

Teste: A. W. QUARRIER, *Clerk.*
April 8th, 1851.

And on the 20th day of September came the defendant, John N. Clarkson, and filed his answer to the attachment awarded against him in this cause, in the words and figures following, to wit:

Answer of John N. Clarkson.

To the honorable judge of the circuit court of Kanawha county, the separate answer of John N. Clarkson to an attachment awarded against him at the instance of C. Ingles vs. Rogers & Bros.

The said respondent, for answer to so much of said attachment as he is advised it is material for him to answer to, saith, that he knows nothing of the matter alleged in said attachment, of his own knowledge, except that portion of the attachment which charges respondent with being largely indebted to the late firm of Rogers & Bros. In relation to this matter, the respondent states, that at the time the subpœna was served upon him in the case of Abraham Dehaven, adm'r, &c., against him and others, in this court, he did not know what sum he was indebted to said firm, if he were indebted at all. Since that period respondent states that he and John Rogers have had a settlement of their accounts, and as a compromise of their unsettled ac'ts, respondent confessed a judgment to them with stay of execution for 12 months; and respondent gave said Rogers & Bros. his (respondent's) acceptances, four in number, for $1,000 each, payable in 3, 6, 9, and 12 months from the date of them, which was some 5 or 6 weeks ago; that at that time respondent was under the impression and believed that said cause had been discontinued or dismissed as to respondent. These acceptances, respondent supposes, have been endorsed and transferred by said Rogers & Bros. to some third person; if not, respondent will owe said Rogers & Bros., when said acceptances mature, the several amounts thereof. They are dated about the 20th of September, 1851.

(Signed) JOHN N. CLARKSON.
Nov. 12th, 1851.

It is agreed that the above statement of John N. Clarkson shall be taken as his answer to the summons in this cause.

J. HEAD.

Judgments.

And now, at this day, to wit, at a circuit court held for Kanawha county, the third day of December, 1851, came the plaintiff, by his

attorney, and it appearing that the order of publication awarded in this cause hath been completed more than one month ago, the defendants were solemnly called but came not; whereupon, the evidence of the plaintiff's demand against the defendants being seen and inspected, it is considered by the court that the plaintiff recover against the defendants $516\frac{50}{100}$, the amount appearing to be due in this action from the defendants to him, with legal interest thereon from the 7th of April, 1851, until paid, and the costs of this suit. And the attachment awarded in this case being returned by the sheriff, that he had summoned John N. Clarkson, one of the garnishees required to be summoned in this suit; thereupon the said Clarkson filed his answer stating his indebtedness to the defendants, which is taken and accepted by the plaintiff as a full answer; and it appearing by said answer that said Clarkson is indebted and liable to pay to the defendants in an amount more than sufficient to satisfy the plaintiff's demand in this action; it is ordered that said Clarkson pay to the plaintiff, out of the moneys in his hands, belonging to said defendants, which he was liable to pay to them on the 9th day of April, 1851, (the day he was summoned as garnishee,) the amount of this judgment against the defendants in favor of the plaintiff.

And this cause is continued on the docket of this court for further proceedings to be had on said attachment, if other proceedings may be deemed necessary.

Teste: A. W. QUARRIER, *Clerk.*

One also in behalf of Abraham E. Sargent and John Ward, and one also in favor of said Sargent, and each of these last mentioned against John Rogers and others.

MEM.—The first mentioned record has not been supplied, and therefore cannot be copied into this record. The last mentioned of which said records is in the words and figures following, to wit:

VIRGINIA, *ss.*

A. E. SARGENT
vs.
JOHN ROGERS and others. } Record.

Pleas before the justices of our county court, for Kanawha county, at the court-house thereof, the first Monday of July, 1849, and in the 73d year of said Commonwealth.

Be it remembered, that heretofore, to wit, on the 15th day of June, 1849, came Abram E. Sargent, by his counsel, and sued out of the clerk's office of said court his writ of subpœna against John Rogers, jr., and others, which writ, together with the endorsement thereof, is in the words and figures following, to wit:

Subpœna.

The Commonwealth of Virginia, to the sheriff of Kanawha county, greeting:

We command you that you summon John Rogers, jr., absent de-

fendant, Samuel H. Early, John N. Clarkson, and William D. Shrewsbury, Charles Hannah, Samuel Hannah, and James Hendrick, trustees, and Samuel Shrewsbury, William J. Jones, William Dickenson, and James Norton, home defendants, if they be found in your bailiwick, to appear before the justices of our county court, for the county of Kanawha, at the court-house thereof, on the third Monday in June, present month, to answer a bill in chancery exhibited against them in our said court by Abraham E. Sargent; and unless they shall answer said bill within two months thereafter, the court will take the same for confessed, and decree accordingly; and this they shall in nowise omit, under the penalty of 333 dollars 33 cents; and have then there this writ.

Witness Alexander W. Quarrier, clerk of our said court, at the court-house of our said county, the 15th day of June, 1849, in the 73d year of our foundation.

A. W. QUARRIER, *Clerk.*

Endorsement.

The object of this suit is to attach the lands and tenements, goods and chattels, rights and credits of the within named John Rogers, jr., the absent defendant, which may be within the county of Kanawha, and to subject the same to the payment of the debt due from him to the complainant, and to restrain, inhibit, and enjoin the within named home defendants, and each and every of them, from paying or delivery to the said John Rogers, jr., or to his order, or to his use, any moneys or effects, goods or chattels, which belong to, or may be due or owing, or which may become due or owing from them, or either of them, to the said John Rogers, jr., until the further order of the court.

Teste: A. W. QUARRIER, *Clerk.*

SIMMES & MILLER, *Solicitors.*

Return.

Executed on all the within named home defendants by delivering to them office copies of this process. The defendant, John Rogers, jr., is not found, and no inhabitant.

S. D. EARLY, *D.*
For JOHN P. TURNER, *S. K. co.*

And at another day, to wit, at rules held in the clerk's office of said court, in the month of July, 1849, came the complainant, by his counsel, and filed his bill against the defendants; which bill, together with the exhibit therewith filed, is in the words and figures following, to wit:

Bill.

To the worshipful county court of Kanawha county, humbly complaining, showeth your honor, your orator, Abraham E. Sargent, of Kanawha county:

That during the years 1847, 1848, and 1849, your orator conducted and operated a foundry in Kanawha salines, and furnished largely to

the salt-makers of Kanawha valley, metals, pans, machinery, engines, &c., used by them in their business of saltmaking. That early in the year 1847, John Rogers, jr., hereinafter named defendant, who was largely interested as owner in a salt property in said county, upon which his brother-in-law, Joel Shrewsbury, then resided, called at the foundry and engaged your orator to supply such articles in the line of his business as should be wanted in and about the furnace operated upon said property; that said Shrewsbury, now deceased, then in life, lived upon the property, was interested as owner in it, and managed the affairs of the furnace; that your orator accordingly furnished to said salt furnace a large bill, amounting to the sum of $683 55, after deducting such credits as it is entitled to; an account of which is herewith filed, marked (A,) and prayed to be taken as part of this bill; that the full sum of $683 55 is now due and owing your orator, and has never been paid to him, or to his use or order; that the items were charged to the said Rogers and Shrewsbury, they being, as your orator was informed and believed, partners in the operation and business of salt making; and your orator now avers and charges that the said Rogers & Shrewsbury were partners in business at that time, the articles were so furnished as aforesaid, and work done, was furnished and done for the purposes, use, and benefit of the firm. That your orator looked to John Rogers, jr., as the only responsible man; and as he ordered the articles and goods in the first place from your orator, if it was not done as a partner it was done on his individual responsibility, and he was the person looked to for payment of the debt. That all the salt manufactured in said furnace was marked and branded in the name of Rogers & Shrewsbury, and shipped to Rogers or the house of which he was the principal partner and manager; and the expenses of the furnace were paid through him or them; that it was alone upon the responsibility of John Rogers, jr., that the said bill was permitted to be made, and to extent to the amount now due and claimed upon the same.

Your orator charges, therefore, that if even the said John Rogers, jr., and Shrewsbury should not have been partners, he, the said Rogers, is legally bound for the payment of this debt.

Your orator now further informs your honor, that the said John Rogers, jr., resides in the city of Cincinnati, State of Ohio, and is a non-resident of this Commonwealth; that he is also a partner of the firm of Rogers & Brothers, grocers and commission merchants, in the city of Cincinnati, the said firm being composed of the said John Rogers, jr., Alfred & Joseph Rogers; that the said Joel Shrewsbury, jr., departed this life in March, 1849, intestate, and as your orator believes, his estate insolvent; that there has been as yet no letter of administration granted upon his estate to any one.

Your orator now further informs your worships, that he has good reason to believe, and does believe, that the said defendants, Samuel H. Early, John N. Clarkson, William D. Shrewsbury, Samuel Shrewsbury, William J. Jones, William Dickinson, and James Norton, all residing in the county of Kanawha, are indebted to the said

John Rogers, jr., or the said Rogers & Brothers, in large amounts, now due and payable to him or them; that Charles Hedrick, esq., was appointed a special commissioner by an order of this honorable court, in a cause therein pending, to sell certain real property known as the "dead property," in Kanawha county, and to collect and distribute the proceeds of such sale among the several owners of said property, and that such sale has been made, and there is now in the hands of said Hedrick, cash, bonds, and notes due and to become due for a large amount, being the proceeds arising from said sale; that the said Rogers was one of the owners of said property, and is entitled to a portion of the proceeds of sale in the said Hedrick's hands, and yet to be collected by him; that some years since, Charles L. Shrewsbury, William Shrewsbury, and Joel Shrewsbury, jr., deceased, were partners in business in the county of Kanawha, under the name and firm of C. L. Shrewsbury & Co., and as such executed a deed of trust on certain negro slaves and personal property, to secure their debts to certain creditors; and that by a clause in that trust deed it was provided that if the said Rogers should pay off and discharge any of the debts therein secured, he should be substituted to all the rights, privileges, and authority of such creditor or creditors so satisfied by him, and to the amount of the debt and interest so paid. That Samuel Hannah and James Hendrick are the trustees in said deed of trust.

That your orator has been informed, and so charges, that large amounts of said debts have been paid by said Rogers, but to what particular creditors he is not informed; and that said negro slaves, or the proceeds arising from their sale, will be justly due to the said John Rogers, jr. That the said William Dickinson and James Norton have in their hands money, salt, or other property belonging to said John Rogers, jr., which they hold or have control of; and the said Dickinson, in his character and capacity as president of the "Kanawha Salt Association," and the said Norton, as secretary of said association; in consideration of all which, and in as much as the said John Rogers is not answerable to the process of the courts of this Commonwealth, and your orator therefore without remedy, except in a court of chancery, he prays that the said John Rogers, jr., William D. Shrewsby, Samuel H. Early, John N. Clarkson, Charles Hedrick, Samuel Hannah, James Hendrick, William Dickinson, and James Norton, Samuel Shrewsbury, William J. Jones, may be made parties defendants in this bill, and answer each and every allegation thereof on their oaths, as fully as though specifically and respectively interrogated thereto; that the said Early, Clarkson, and Shrewsby, and the said James Norton, and Wm. Dickinson, Samuel Shrewsbury, and W. J. Jones, severally answer and say how much each of them is respectively indebted to the said John Rogers, jr., or the said Rogers & Bros., and when the same is payable; also what money, property, goods, chattels, effects, or funds of any kind whatsoever they or either of them have in their hands or under their control belonging to the said John Rogers, jr., or the said Rogers & Bros., and the condition of the same. That the said Samuel Hannah

and James Hendrick answer and say what money, funds, effects, or property of any kind they, or either of them, have in their hands or under their control to which the said John Rogers, jr., is entitled or may be entitled, and where the property conveyed on said deed of trust is now, if unsold; that the said parties, defendants, be respectively restrained, inhibited, and enjoined, by an order from this court, from paying any debts or moneys due by them, or either of them, to said John Rogers, jr., his agents or attorneys, or the said Rogers & Bros., their agents or attorneys, or from delivering any money, effects, or property of any kind in their, the said defendants', hands or under their control, to the said Rogers, or the said Rogers & Bros., until the matters herein complained of shall be heard and determined. And that your worships will grant such other and further relief as your orator's peculiar grievances may require, &c.

A. E. SARGENT, *by his counsel.*
S. & M., *for plaintiff.*

Exhibit.

Messrs. Rogers & Shrewsbury, To A. E. Sargent, *Dr.*

1847.			
April 29	To 2 ps. 4 feet pan, 1,300 lbs., 3 c	$39 00	
" 29	1 8-feet bearing bar, 415, 3	12 45	
May 3	16 ps. 3½ feet E grates, 26 lbs. each, 416, 3 c	12 48	
" 26	1 ps. 4 feet pan, 720 lbs., 3 c	21 60	
" 26	6½ lbs. brass, 50 c	3 25	
" 26	1 valve, and fitting up	2 50	
" 31	1 ps. 4 feet pan, 720 lbs., 3 c	21 60	
July 15	4 jams to tea head, 31¼ c	1 25	
" 16	1 ps. 4 feet pan, 670 lbs., 3 c	20 10	
			$134 23
" 16	1 ps. 4 feet pan, 662 lbs., 3 c	19 86	
" 23	Repairing boiler, by cutting, splicing manhead, &c	28 00	
" 23	2 gauge blocks, $2 50	5 00	
" 23	1 supply-pipe and fitting up	15 00	
" 23	1 safety-pipe, and fitting up	15 00	
" 23	To manhead bridge, and bolts on same	3 00	
" 23	1 engine front, 180 lbs. 3 c	5 40	
" 23	1 manhead 40 lbs., 3 c., $1 20; 6 feet band bar 160, 3 c., $4 80	6 00	
			97 26
			231 49
	Amount brought over	231 49	
Aug. 18	5 ps. 3½ feet double grates 70 lbs. each, 350, 4 c	14 00	
" 26	1 ps. 4 feet pan, 650 lbs., 3 c	19 50	
" 26	5 ps. 3½ feet double grates 375, 4 c	15 00	
Sept. 4	For boring out cylinder	10 00	
" 4	making offset 2 00; refitting bolts, 75 cts	2 75	
" 11	4 65-lbs. grates, 260 lbs., 4 c	10 40	
" 24	1 ps. 4 feet pan, 650 lbs., 3 c	19 50	
" 24	4 ps. 225 lbs. car wheels, 900, 4 c	36 00	
" 24	1 kettle for L. Hill, 68 lbs., 6 c	4 08	
" 24	Boring out 4 wheels and setts cut, $1 25	5 00	
			136 23
Nov. 8	3 ps. 225 lbs. car wheels, 675, 4 c	27 00	
" 8	fitting up 3 car wheels, $2 50	7 50	
" 22	1 wagon box	37	

Dec. 29	For 1 ps. 4 feet pan 675 lbs., 3 c.	$20 25	
" 29	making dies and centre screws.	6 00	
1848.			
Jan. 31	1 ps. 4 feet pan 650 lbs., 3 c.	19 50	
Feb. 12	4 spade handles, straps and boxes, $5 00.	20 00	
" 12	4 spade handles, $1 00.	4 00	
July 21	2 250-lbs. car wheels 500, 4 c.	20 00	
" 21	fitting up the same.	5 00	
			$129 62
" 25	6 5-inch flanges, 37½ c.	2 50	
" 30	fitting up 2 car wheels.	5 00	
" 30	1 100-lbs. axles, $10.	10 00	
" 30	1 105-lbs. axles, $10 50.	10 50	
Aug. 3	6 3-inch flanges, 25 c.	1 50	
" 10	2 250-lbs. car wheels 500, 4 c.	20 00	
" 10	fitting up the same.	10 00	
" 10	1 100-lbs. axle.	11 00	
" 10	fitting up 2 old wheels.	5 00	
			75 25
	Carried over		572 59
	Amount brought over. 572 59		
" 16	1 large pump for engine.	28 00	
Sept. 12	2 ps. 8 feet pan 1,300 lbs. each, 3 c.	78 00	
Oct. 3	3 ps. 8 feet furnace grates, $10 50.	31 50	
" 25	10 ps. 3½ feet E grates 25 lbs each, 3½	12 25	
1849.			
Jan. 3	2 240-lbs. car wheels 480 lbs., 4 c.	19 20	
" 6	1 180-lbs. engine frames, 3 c.	5 40	
" 6	1 40-lbs. engine shutter, 3 c.	1 20	
" 6	3 large car boxes, $1 00.	3 00	
" 6	4 3½-feet engine grates 35 lbs. each, 3 c.	4 20	
			182 75
" 6	fitting and straitening axle to car wheel.	3 00	
" 8	refitting old car wheel.	2 50	
" 9	4 3 28-lbs. car wheels 1,312, 4 c.	52 48	
" 9	fitting up same	10 00	
" 9	1 8-feet grate.	10 50	
" 6	1 sledge 75 c.; 1 3-inch screw $5 00.	5 75	
" 27	1 draw box, 1 stand box.	10 00	
" 27	5 3-inch screws $4 50.	22 50	
Feb. 1	1 shine $2 50.	2 50	
April 6	1 2-feet house grate for Hale.	3 50	
			122 73
			$878 07
1847.	*Credit.*		
May 26	By 3,100 lbs. old metal, 20 c.	$27 32	
" 26	5 lbs. old copper, 18 c.	90	
July 7	3 tons pig metal, $32.	96 00	
" 23	800 lbs. old metal, $8 00.	8 00	
Sept. 25	1,130 lbs. old metal.	11 30	
Nov. 8	2 car wheels returned.	18 00	
1848.			
Jan. 1	1,150 lbs. old metal.	11 50	
Aug.	215 lbs. axle iron returned.	21 50	
			194 52
	Balance due A. E. Sargent.		$683 55

In which condition this cause now remains.

Teste: A. W. QUARRIER, *Clerk.*"

Also the cross bill of said Early against John & Joseph Rogers and others, and the proceedings thereon, in the words and figures following, to wit:

VIRGINIA, *sc.*

S. H. EARLY
vs.
JOHN ROGERS & others. } Record.

Pleas before the judge of the circuit court for Kanawha county, at the court-house thereof, the 1st Monday of March, 1853, and in the 77th year of said commonwealth.

Be it remembered that heretofore, to wit, at a circuit court held for said county, the 6th day of December, 1852, came Samuel H. Early and filed his cross bill against Nathaniel V. Wilson and others, which said cross bill is in the words and figures following, to wit:

Cross bill.

To the honorable George W. Summers, judge of the circuit court for Kanawha county, in chancery sitting:

Humbly complaining showeth unto you, your orator Samuel H. Early: That, having become indebted to John and Joseph Rogers, of Missouri and Ohio, in the sum of ten thousand dollars, as of the 15th September, 1852, and perhaps for 129 $\frac{1}{100}$ costs, as to which your orator is not certainly advised, being the amount of a recovery against him in the federal court at Charleston, appealed and adjusted by compromise for the said sum of $10,000, to be paid on the said 1st day of September, 1852, a great many persons, before the said 1st of September, 1852, attached the said moneys in the hands of your orator, so that he could not legally or properly pay the same before that day or since; the attachments and other processes to be presently mentioned, exceeded greatly the amount in your orator's hands; some of them were against Rogers & Bros., and some of them against John Rogers. Your orator could not with safety or propriety undertake to say how much should be paid to any one, nor to whom any should be paid; nor the order or propriety of any payment, nor to whom the money in his hands belonged; nor what was the extent of the interest of the said John Rogers in the same, and of course could not undertake to say what was the extent of the rights of the creditors, either of said John singly or of said Rogers & Bros.

All these were questions which the said attaching creditors might litigate in the said causes, nor could the risk of them be assumed by your orator.

The separate creditors of the said John might require settlements of the partnership accounts, and show that he had an interest in the said funds after all partnership purposes were satisfied; and prima facie without this, until the reverse were pleaded and shown, he would be entitled to a moiety thereof. The amounts so attached, and the several

rights of the said creditors of John Rogers and Rogers & Brothers, your orator could not determine.

It was obliged to be referred to the determination of the court, in the said several causes. The said Rogers & Bros. thus, by their own acts or by those of their creditors representing and enforcing their rights, and for which the said Rogers & Bros. are responsible, prevented your orator from paying the said $10,000 before the said 1st day of September, although your orator was ready and willing and offered to pay, and would have paid the same, and any thing else he was liable to pay, but for the said attachments, of which said attachments the said Rogers & Bros. had notice.

The persons so attaching are Nathaniel V. Wilson, Charles Hedrick, Joseph Rives, William Featherston, administrator of Abraham Dehaven, William D. Shrewsbury, Crockett Ingles, Robert H. Early, Abraham E. Sargent, and John Ward, Abraham E. Sargent, Franklin Noyes and Henry Chappell. Your orator is advised that it is proper by this cross bill (and he prays that it may be taken as such to the bill of said Nathaniel V. Wilson) to bring all the said attaching creditors together, with the said John Rogers and Joseph Rogers, in order to save multiplicity of suits, and to protect himself from hazard. He prays, therefore, that all the said parties may be made defendants; that they severally answer this bill; that the court ascertain their respective rights; that they be referred to a master, if necessary, for that purpose; that the court say to whom the said $10,000 shall be paid; (with said costs, if liable for them;) and your orator is ready and willing to pay the same as the court shall order; that the said parties, if necessary, be restrained from proceeding on their several bills and actions; and finally, that your honor grant to your orator such other further and general relief as the case now made, or it shall hereafter appear will warrant.

SAMUEL H. EARLY, *by counsel.*

Whereupon process is awarded to the said Early to cause the defendants named in the foregoing bill to answer the same; which process is in the words and figures following, to wit:

Subpœna.

The Commonwealth of Virginia, to the sheriff of Kanawha county, greeting:

We command you that you summon John Rogers, Joseph H. Rogers, Nathaniel V. Wilson, Charles Hedrick, Joseph Rives, William Featherston, administrator of Abraham Dehaven, William D. Shrewsbury, Crockett Ingles, Robert H. Early, Abraham E. Sargent and John Ward, Abraham E. Sargent, Franklin Noyes and Henry Chappell, if they be found in your bailiwick, to appear before the judge of our circuit court, for the county of Kanawha, at rules to be held in the clerk's office of said court, on the first Monday in February next, to answer a cross bill in chancery exhibited against them in our said court, by Samuel H. Early; and have then there this writ.

Witness Alexander W. Quarrier, clerk of our said court, at the court-house of our said county, the 13th day of January, 1853, in the 77th year of our Commonwealth.

A. W. QUARRIER, *Clerk.*

Return.

Served as to F. Noyes, Wm. D. Shrewsbury, Charles Hedrick and N. V. Wilson, on the 17th January, 1853; as to Ingles, A. E. Sargent in two capacities, as an individual and as a member of the firm of Sargent & Ward; and R. H. Early and H. Chappell on and before the 3d of February, 1853, by delivering to each of them an office copy hereof; balance of defendants not found.

J. H. NORMAN, and
J. SLACK, Jr., *D.*,
For J. H. FRY, *S. K. co.*

And now at this day, to wit, at rules held in the clerk's office of the said court, in the month of March, 1853, it appearing by affidavit filed that the defendants, John and Joseph Rogers, are non-residents of this State, it is ordered that they do appear here, within one month after due publication of this order, and do what is necessary to protect their interests in the premises.

In which condition this cause now remains.

Teste: A. W. QUARRIER, *Clerk.*

Whereupon, on consideration of said rules to show cause why the execution should not be limited to the sum of $10,000, principal of said judgment, &c.; and why execution should not be stayed, &c.; the court was of opinion to discharge and disallow each of said rules, which was done accordingly; to each of which opinions and judgments of the court the defendant, Early, by his counsel, excepts, and prays that then his exceptions may be signed, sealed and reserved to him.

JOHN W. BROCKENBROUGH, [SEAL.]

And the said Samuel H. Early, thinking himself aggrieved by the judgment of the court in the premises, prays a suspension of judgment, that he may have time to apply to the Supreme Court of the United States for a writ of supersedeas. Whereupon it is ordered that execution of this judgment be suspended for the space of ninety days from this date, upon his entering into bond with good security, in the penalty of $13,000, before the clerk of this court, within thirty days from this date, conditioned as required by the 4th section, chapter 182, page 683, of the code of Virginia.

I, Erasmus Stribling, clerk of the district court of the United States for the western district of Virginia, at Charleston, do hereby certify that the foregoing is a true transcript from the records and files of said court.

In faith whereof I have hereunto set my hand and affixed the seal of said court, at Charleston, this 20th day of May, A. D. 1853, [SEAL.] and in the 77th year of the independence of the United States of America.

ERASMUS STRIBLING,
Cl'k U. S. ct. W. D., Va.

May 20, 1853.
Fee for record, $40 00.

To the honorable judges of the Supreme Court of the United States:

Your petitioner, Samuel H. Early, humbly represents that he is aggrieved by the judgment of the court in the above cause, and that there are errors in the same.

The judgment of the Supreme Court was for the sum of $10,000, if paid by the 1st of September, 1852, and the costs; that before the time of payment arrived a sum greatly exceeding that amount was attached in the hands of petitioner by the creditors of John and Joseph Rogers, which were pending, and on which final judgments had not been rendered. Your petitioner, therefore, was prevented from paying the same to the said John and Joseph in person, nor could he safely pay to the attaching creditors, only under legal process, or order of a court of competent jurisdiction. The attachment suits were pending, but not prosecuted to final judgment.

The court therefore erred in adjudging that your petitioner lost the right of discharging the judgment by the payment of $10,000, by failure to pay at the time, and that the attachments furnished no excuse for the non-payment.

The court also erred in refusing to stay the issuing of execution on the judgment until the further order of the court. The attachments against petitioner were in full force, and until they were acted upon by the courts in which they were pending, and final judgments rendered therein, the court should not permit petitioner to be harassed by execution, and be subjected, perhaps, to a second payment of said judgment.

For these, and divers other errors to the prejudice of petitioner, apparent on the face of the record, he, your petitioner, prays that a writ of error may be awarded him, and that the said judgment may be reviewed and reversed.

SAMUEL H. EARLY.

I, John Y. Mason, an attorney practising in the Supreme Court of the United States, do hereby certify that I have examined the above judgment, and am of opinion there is error in the same sufficient to reverse it.

J. Y. MASON.

May 23d, 1853.